NO. 93-932

Supreme Court, U.S.
FILED
DEC 13 1993
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

TENNIE B. ROGERS,

Petitioner

versus

MARCH FONG EU,
CALIFORNIA SECRETARY OF STATE
IN AND FOR THE STATE OF CALIFORNIA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
THIRD APPELLATE COURT OF THE
STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

PETITION FOR WRIT OF CERTIORARI

Tennie B. Rogers
IN PRO PER
6710 South Quaker Avenue
Tulsa, OK 74136-3801
(918) 496-9047

219 pp

QUESTIONS PRESENTED FOR REVIEW

1. Isn't it illegal, during a filing period, for the California Secretary of State[1] to break her own written contract with the public, by changing, not once, but two or three times, her own criteria for selecting a United States Presidential candidate for ballot placement? (See Appendix:[2] A 100-102; A 110-113; A 114-116; A 123.) Judge Gualco could certainly see this! After the LaRouche vs. Eu case hearing, Judge Gualco in his opinion, stated that since the CA SOS had decided to use only her first original criterion No. 1--"Qualification for Federal Election Commission matching funds," as a threshold criterion for ballot placement, (totally ignoring her own criteria, No. 2 and No. 3), then she was not following either the CA Election Code or the CA Constitution! (A 24). Judge Gualco's opinion in the LaRouche v.Eu case would also apply in Plaintiff's case!

---

[1]Also referred to herein as SOS.

[2]Also referred to herein as A.

QUESTIONS PRESENTED FOR REVIEW

2. Isn't the Grandfather Clause still valid? Why wasn't it used when the CA SOS decided to change her selection criteria? Petitioner qualified early on, in January, 1992, for ballot placement under the California SOS's original criterion number two--"Running in primary elections in other states", (A 102). So, why wasn't Petitioner "Grandfathered In" for ballot placement?

3. If all prospective U. S. Presidential candidates were suppose to legally have until April 4, 1992 (A 113), to get their names on the CA SOS's list for ballot placement, then how could the "Special Absentee Voters" in CA, legally start casting their ballots as early on as April 3, 1992, which was one day before the CA SOS was to prepare her certified list of qualified presidential candidates? Also, how could voting legally begin on April 3, 1992 when no election clerk, was even suppose to process,(A 95)[3]

---

[3]All section references are to the CA Elections Code unless indicated otherwise.

an application, for a special absentee ballot before she had received from the SOS's office, the SOS's certified list of candidates, whose list was not suppose to be finalized and published until April 4,1992? And again, if voting began on April 3,1992 then would not that also suggest that the printing of the ballots started illegally too soon as well? How could the printers know what names to even print on the ballots without receiving the SOS's official certified list published on April 4, 1992?

4. Since ballots were being printed too soon, which Petitioner has shown above, (See Question No. three supra, and also Petitioner's Brief requesting a rehearing in the CA Appellate Court, and again in Petitioner's brief asking for a review in the CA Supreme Court), then how can the Appellate Judicial Opinions of denial stand, since their denials were made on the basis of the Defendant asserting that "tens of thousands of absentee ballots had already

been cast and returned as of the time Plaintiff filed her petition for Writ of Mandate for ballot placement"? (A 6, A 125). It seems to Petitioner that she should win this case on this point, "Ballots were being printed, much too soon, and voters were being permitted to vote, entirely too soon", and also in lieu of the fact that Petitioner had already won her right for ballot placement under the SOS's own original criterion No.2, "Running in primary elections in other states"! (She was on nine other ballots!)

5. Isn't it illegal also for the CA Appellate Court Justices to not even consider Petitioner's U. S. Constitutional Amendment Right Number One, "...to petition the CA Government(SOS) for a redress of grievances or reparation? (A 92). (The first request for reparation was for two million dollars, but since the voting went forward without Petitioner's name on the ballot, then her second request was in the amount of ten million dollars.) How valid are the

following reasons which the Justices gave for their nonconsideration for Petitioner's request for reparation:

A. "It was incumbent upon Plaintiff to bring her petition for writ of mandate at the earliest possible date. Instead plaintiff waited until after five million sample ballots had been printed, most of them had been mailed, and tens of thousands of absentee ballots had been cast before seeking relief in the superior court." (A 7-8).

Where does it state in the U. S. Constitution that Petitioner must bring her requests for reparation or ballot placement within days to the Court System? Actually Appellant did come as soon as it was possible for her, to present her petition to the Court System. It took her only 28 days from the time she heard the final word from the SOS's office on April 10, 1992, until May 8, 1992 when she presented her requests to the Court. Appellant requested two things: ballot placement and reparation. Since when has only 28 days become a span of time that's too long, in which to ask a government for a redress of grievances?

Instead, why can't it be said that it was the SOS who had waited around too long in not granting petitioner, her earned right for ballot placement, since as early on as January, 1992? And again, Why did it take until the Appellate Court Hearing for the SOS to admit that Judge Gualco's Opinion was right and that she had done wrong, which in essence meant that she had done Petitioner wrong as well? (A 22-26). But no where in the Appellate Court Judges' opinion, do they mention this fact, and why not? After all, it certainly is very pertinent here!

B. "In the prayer of her petition plaintiff demands 'reparation fees in the amount of two million dollars to make amends for the Secretary of State continuously denying the candidate, Tennie Rogers, her constitutional rights to have her name placed on the California Republican Presidential Primary Ballot.' There is no other mention in the petition of 'reparations' or damages . . ." (A 8). (Underlining added for emphasis.)

Now how valid is the above Judges' reasoning when Petitioner in her Original Super-

ior Court File,[4] page 34, lines 25-28, stated the following:

> ". . . Petitioners are entitled to a Peremptory Writ of Mandate pursuant to Elections Code Section 10015, requiring the relief stated in the prayer below which is incorporated herein by reference as if set forth herein in full"? (Underlining added for emphasis.)

Does not the underlined portion just quoted mean that everything mentioned in the OSF prayer which followed, was to be counted as if it had already been quoted verbatim in the section above as well? That's certainly what it meant to Petitioner, so how can the Judges legitimately claim that Petitioner had only asked for reparation in her Prayer? And again, where does it state in the U. S. Constitution that if the Petitioner fails to ask for a redress of grievances in a certain paragraph in her petition, then the Judges are not even duty bound to consider it?

---

[4]Also referred to herein as OSF.

C. And finally, the Judges stated:

> ". . . nor is there any allegation of a substantive basis for such relief. '[T]he prayer is no part of the statement of the cause of action.' (Berg v. Investors Real Estate Loan Co. (1962) 207 Cal. App. 2d. 808, 815; Nemeth v. Trumbell (1963) 220 Cal. App. 2d. 788, 791.) We give plaintiff's demand for 'reparation' no further consideration." (A 8-9).

Now how valid is the above Judges' reasoning, in lieu of the following:

1) From her OSF page 37, lines 15-28 and page 38, lines 1-2, Petitioner stated:

> ". . . In fact, even two million dollars could not totally compensate for the emotional drain that the Secretary of State has caused the candidate, Tennie Rogers, by consistently denying her, her constitutional rights to have her name placed on the upcoming June, 1992 Republican Presidential Primary Ballot. The above issue is only one of the issues; the time factor should also be addressed. Needless to say, hundreds of hours of the candidate is having to be spent in the preparation of this request for a Writ of Mandate by the Court. This is very valuable time, which the candidate, could, should, and would have been using out on the campaign trail, if it were not for this Court Case. At this point in time, the candidate had hoped to be campaigning in both the states of Nebraska, as well as in California,

if she was not being delayed by having to take this case to Court, in order to speak out for her Constitutional rights--and speak out she must!"

2) And again from Appellant's Opening Brief, page 3, lines 3-12, Appellant stated:

". . . Since the Secretary of State had abused her discretion and kept on denying Tennie Rogers her Constitutional right to have her name on the California Primary Ballot, then she, the Plaintiff, had requested to be granted reparation in the amount of at least two million dollars for this denial.

"Now that more time has elapsed since then, and the Primary voting in California went forward without Tennie Rogers' name on the Ballot as a Republican Presidential Candidate, thus hindering her from utilizing the precious time in the rest of the month of May where she could have spent every day campaigning before the people, the Plaintiff has decided to ask for an increased judgment to be awarded her in the amount of five hundred twenty seven dollars and fifty cents ($527.50) in compensatory damages (Court Costs), and also ten million dollars ($10,000,000.) in punitive damages! THIS IS NO SMALL THING TO DENY THE PLAINTIFF, TENNIE ROGERS, HER RIGHT TO TRY FOR THE HIGHEST OFFICE IN OUR LAND--U.S. PRESIDENT."

Isn't the above information, which was given in Appellant's briefs before the

Appellate Court Hearing, more than an abundant substantive basis for reparation relief? And considering Appellant's U. S. Constitutional Amendment Rights No. 1 and No. 14, shouldn't this have warranted Judicial consideration? (A 92). In addition, regarding Appellant's request for reparation in the amount of ten million dollars, since all Presidential Candidates considered every second of their campaign time to be extremely valuable, Plaintiff being one of them on nine state ballots, then why shouldn't Plaintiff ask for ten million dollars for reparation? According to the newspapers both Barbara Boxer and Diane Feinstein each spent ten million dollars apiece just trying to win the CA Primary Senatorial race in 1992. How valuable do you think they considered their campaign time to be worth, and they were only trying for the Office of Senator?

QUESTIONS PRESENTED FOR REVIEW

Since Appellant was trying for the highest office in the land, U. S. President, then why shouldn't she consider the infringement upon her constitutional rights, no small injustice and worthy of reparation?

Finally, here's another point which should have been mentioned. In denying Appellant her "earned right" for ballot placement, the SOS was also, in essence, denying Appellant all the benefits which would have accrued from Appellant having run in CA for the highest office of U. S. President! The benefits would have been enormous in helping her in trying for that same office the second time around! Now what kind of a price tag would that be worth? Appellant considers this to be more than substantial evidence for reparation of ten million dollars!

QUESTIONS PRESENTED FOR REVIEW

6. Since others quoted from previous cases, doesn't Petitioner have a U.S. Constitutional right to quote from other cases as well? Doesn't Petitioner also have a Constitutional right for the Judges to listen to her and to take judicial notice of what she had said? After all, isn't there suppose to be equality under the law? In the Appellate Court Judges' Opinions, footnote No. 4 (A10), the Judges stated:

> "Petitioner makes numerous references in her brief on appeal to LaRouche v.Eu (Super. Ct. Sacto. County, 1992, No. 369837). We construe such references as a request for judicial notice. In light of our determination herein, judicial notice is unnecessary and on that basis the request is denied."

Should not Petitioner's U. S. Constitutional Amendment Rights No. 1 and No. 14 have been honored here? If not, why not? (A 92).

7. Again, isn't it illegal, also, for the Appellate Court Justices to show discriminatory treatment in favor of the CA SOS, even when the facts "speak otherwise" and contradict it? Petitioner considers it to

be prejudicial and discriminatory by the Appellate Court Justices to not even consider it necessary to take Judicial notice (A 10), of anything that Judge Gualco had to say in his opinion in the LaRouche vs. Eu Case No. 369837 (A 22-26), to which Petitioner had quoted, not only in her briefs, but also in the Courtroom Hearing of the Appellate Court as well! Judge Gualco stated (A 24) that the CA SOS, in essence had abused her discretion by accepting only one, the first one, of her own three criteria to be used in her selection of Presidential Candidates for ballot placement. Judge Gualco further stated that in so doing, the CA SOS had not followed either the CA Election Code (Section 6311) or the CA Constitution, Article 2, Section 5. (A 24; A 98; and A 93). To which and for the first time, the CA SOS, by way of her counsel, admitted in the Appellate Courtroom that Judge Gualco was right and that she, the CA SOS had done wrong! Neither Lyndon LaRouche nor Peti-

tioner had qualified for federal matching funds under the CA SOS's criterion No. 1; however, both had already qualified under her number 2 criterion--"Running in primary elections in other states". (A 102). So, for the CA SOS to admit in the Appellate Courtroom, by way of her legal counsel, that she had done wrong, meant that she had done Petitioner wrong as well. So why did the Appellate Court Judges want to totally discount and not even mention any of these facts, anywhere, in their opinions? Search their opinions (A 2-10), and you will not find any of these truths mentioned, anywhere. Why not? Instead, the Justices said in their footnote No.4: (A 10)

> "Petitioner makes numerous references in her brief on appeal to LaRouche v. Eu (Super. Ct. Sacto. County, 1992, No. 369837). We construe such references as a request for judicial notice. In light of our determination herein, judicial notice is unnecessary and on that basis the request is denied."

Isn't this discrimination by the Appellate Court Justices to rule in favor of the Defendant, the CA SOS, even when the facts

"speak otherwise" and contradict it?

8. In the Appellate Court Justices' Opinion (A 10), the Justices said:

> "The judgment (order) is affirmed. The defendant shall recover costs."

Now, why should Petitioner be required by law to pay the Defendant, the CA SOS's Court costs when by all rights the Petitioner and not the Defendant, should have won this case? Petitioner was shocked when she first read the Judges' Opinion, because Petitioner had every reason to believe that she had won this case when she left the Appellate Courtroom Hearing. In the Hearing, the opposing side countered nothing that Appellant had said and even admitted to the Court that the SOS said that she had done wrong and that Judge Gualco's opinion was right. Where is Judicial Fairness and Justice these days? It certainly has not been shown in this case!

9. Since two things were requested in her original Petition for a Writ of Mandate,

QUESTIONS PRESENTED FOR REVIEW

A) Ballot placement prior to the Primary Election and

B) Reparation for grievances caused Plaintiff for lack of, early on ballot placement (which Plaintiff had earned early on),

then how can the Justices legally deny the first one above and totally ignore the second one by saying:

> ". . . plaintiff . . . claim avails her nothing. First the issue is moot in light of the fact the primary election has long since passed"? (A 7).

But remember, Plaintiff came within days, not months or years, petitioning the Court for a Writ of Mandate requesting ballot placement and asking the government (CA SOS) for a redress of grievances--reparation! The point is, Plaintiff had been done wrong, to which the SOS admitted, so why doesn't Plaintiff have a Constitutional Amendment Right No. 1 and No. 14 to ask for both ballot placement and reparation? If the CA SOS had honored her own criterion

No. 2, "Running in primary elections in other states", (A 102), then there would never have been a Court Case on this matter in the first place. So, since the problem lies with the CA SOS not honoring her own rules, or selection criteria, then how can the Justices keep on denying Plaintiff her rights--both "earned" and Constitutional?

10. How valid is the following Appellate Court Justices opinions:

> "Although the superior court's order, is silent as to the basis for the denial of the petition for writ of mandate, it appears clear the court could not have granted plaintiff the relief afforded by section 10015. That is, a writ may issue only if it would not substantially interfere with the conduct of the election. (§ 10015, subd. (a) (2).) Given the belatedness of plaintiff's mandamus proceeding, the superior court could not have granted plaintiff the relief she sought without running afoul of section 10015. Accordingly, we find no error, in the trial court's determination"? (A 8; A 99)

Now let us look together at all of the second paragraph of the CA Election Code §§ 10015. It reads as follows:

> "(A) peremptory writ of mandate shall issue only upon proof that the error,

omission or neglect is in violation of this code or the Constitution

and

that issuance of the writ will not substantially interfere with the conduct of the election." (A 99). (Underlining added for emphasis.)

Now looking back at the first half of the last quoted sentence listed supra and the portion that reads, "that proof was needed", Plaintiff can think of no better proof than that given by Judge Gualco regarding the LaRouche vs. Eu case when he stated that the SOS's mechanical application of considering only her criterion No. 1 as a threshold requirement for ballot placement was inconsistent with both the Election Code as well as the CA Constitution. (A 24). And even at the Appellate Court Hearing, the SOS finally admitted also that she had done wrong. So, in lieu of these facts, that leaves only the second half of the above quote of the Election Code § 10015 to consider:

". . . that issuance of the writ will not substantially interfere with the conduct

of the election." (A 99). (Underlining added for emphasis.)

So in considering the validity of the Appellate Court Judges' opinions, let's consider these points:

1) Since Plaintiff had "earned" ballot placement since as early as January, 1992, then it certainly wasn't her fault that the month of May arrived and her name still was not on the upcoming June Presidential Primary Ballot; and

2) Since the word "substantially" listed in the Election Code above, is a non-specific, vague term in meaning, then this is neither "good science", nor "good law" to use vague terminology in describing something scientifically or legally; and also

3) The above quotation from the "Election Code" is not a quotation from the California Constitution. Since the Election Code of CA was drawn up to help implement and/or to help understand the Con-

stitution, we must never forget that the Election Code, itself, does not bear equal weight with the Constitution. The CA Election Code, is not CA law! And,

4) Finally, at this point, it seems very appropriate to quote from Tashjian v. Republican Party of Connecticut (1986) 479 U. S. 208 - 237. (A 29-91). It is as follows:

> "The fact that the State has the power to regulate the time, place, and manner of elections does not justify, without more, the abridgment of fundamental rights, such as the right to vote or, as here, the freedom of political association." (A 31).
>
> "The possibility of increases in the cost of administering the election system is not sufficient basis for infringing appellees' First Amendment rights." (A 31-32). (Underlining added for emphasis.)

So in light of all of the above facts, plus all those listed in the Questions No. 1 - 9 supra, then how valid is the above Appellate Court Judges' Opinion on this issue?

11. Instead of the Judicial Opinions totally

denying Plaintiff ballot placement, which she had earned, and since the hands of the clock cannot be turned back in time now to the Primary Election of 1992, then wouldn't it be fair, to order the Court to grant ballot placement for Plaintiff for the next upcoming Presidential Primary in CA in 1996? After all, Plaintiff had earned ballot placement in 1992, but it was never granted; this was wrong! And finally, should not reparation also be granted in the amount of ten million dollars for a redress of grievances caused Plaintiff by the California State Government (CA SOS)? Thank you for considering these questions!

Respectfully submitted,

By Tennie B. Rogers

TENNIE B. ROGERS, IN PRO PER
6710 South Quaker Avenue
Tulsa, OK 74136 - 3801
(918) 496-9047

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
TABLE OF AUTHORITIES	xxiii
A LIST OF OTHER COURT DECISIONS IN THE ROGERS vs. EU CASE	1
GROUNDS FOR A WRIT OF CERTIORARI	2
CITATION OF CONSTITUTIONAL PROVISIONS, CA ELECTION CODES, ONE FEDERAL CASE AND ONE STATE CASE ON WHICH THIS, ROGERS vs. EU, CASE HINGES	9
INTRODUCTION	10
APPELLATE JUDGES' OPINION vs ARGUMENTS .	18
CONCLUSION	59
APPENDIX INDEX	A i
APPENDIX	A 1

TABLE OF AUTHORITIES

CONSTITUTIONS

Page

UNITED STATES CONSTITUTION
ARTICLE II, SECTION 1(5). 4, A92a

UNITED STATES CONSTITUTION
AMENDMENT NO. 1 . . . . x, xii, xvi, 2, 4
. . . . . 9, 18, 26, 34, 44
. . . . . 45, 47, 52, 56, A92b

UNITED STATES CONSTITUTION
AMENDMENT NO. 14 . . x, xii, xvi, 2, 5, 9
. . . . . .18, 26, 34, 44, 45, 56, A92b

CALIFORNIA CONSTITUTION, ARTICLE II
SECTION 5 . .xiii, 9, 13, 21, 22, 32, A93

STATUTES

CALIFORNIA ELECTION CODES:

§ 1000(c) 9, 39, 40, A94

§ 1002 . . . . . 9, 39, A94

§ 1003 . . . . . 9, 39, A95

§ 1202.1 . . . . . ii, 9, 37, 39
. . . . . 40, 41, 42, A95

§ 6010 . . . . . 9, 20, 21, 24, 29, A97

§ 6013 . . . . . 9, 26, A97

§ 6311 . . . xii, 9, 13, 21, 22, 32, A98

§ 10015 . . . . . xvii, xviii, 9, 30, 31
. . . . 33, 47, 51, 59, 60, A99a

§ 20021 . . . . . 47, A99b

GRANDFATHER CLAUSE . . . . . ii, 17

TABLE OF AUTHORITIES (CONT'D.)

FEDERAL CASE

Page

TASHJIAN v. REPUBLICAN PARTY OF CONNECTICUT (1986) 479 U. S. 208-237. .xx, 6, 9, 35, 51, 52, A29

STATE CASES

BERG v. INVESTORS REAL ESTATE LOAN CO. (1962) 207 CAL. APP. 2d 808, 815 53

LA ROUCHE v. EU (1992), CALIFORNIA CASE NO. 369837 . . i, vi, xiii, xviii, 9 . . . . . 13, 14, 15, 16, 20, 21, 22 . . . . . 25, 30, 32, 57, 58, 59, A22

NEMETH v. TRUMBULL (1963) 220 CAL. APP. 2d 788, 791 53

SALAZAR v. CITY OF MONTEBELLO (1987) 190 CAL. APP. 3d 953, 956-957 47

REFERENCES ON THIS STATE CASE ROGERS v. EU

SUPERIOR COURT OF CALIFORNIA DECISION NO. CV370371 (5-12-92). . . 1, 31, 43, 48 . . . . . 50, 51, 52, 57, A1

THIRD APPELLATE COURT OF CALIFORNIA DECISION NO C013733 (7-23-93) . . v, vi . . . viii, xii, xiii, xiv, xv, xvi, xvii . . . . xx, 1, 19, 20, 21, 23, 24, 26, 27 . . . 29, 30, 35, 36, 43, 44, 47, 50, 51 . .52, 53, 56, 57, 58, 59, A2, A20a, A21a

THIRD APPELLATE COURT (C013733) REHEARING DENIED (8-17-93) 1, A11

CALIFORNIA SUPREME COURT (S034588) REVIEW DENIED (9-29-93). . . . 1, 2, A12

TABLE OF AUTHORITIES (CONT'D.)

REFERENCES ON THIS STATE CASE
ROGERS v. EU

Page

PLAINTIFF'S ORIGINAL SUPERIOR COURT FILE (OSF). . . . . vii, viii, 13, 19, 36 . . . . .38, 52, 53, 54, 55, 56

APPELLANT'S OPENING BRIEF (AOB). .ix, 53, 55

RESPONDENT'S BRIEF 3, 39

APPELLANT'S REPLY BRIEF 3, 4, 5, 53

CA SECRETARY OF STATE'S ORIGINAL SELECTION CRITERIA FOR PRESIDENTIAL CANDIDATES . . . i, ii, iv, xiv . .xvii, 5, 9, 11, 12, 17, 20, A100, A102

CA SECRETARY OF STATE'S NEWS RELEASE (January 31, 1992). .ii, iii 6, 12, 20, 21, 22, 37, 38, 43, A110, A113

CA SECRETARY OF STATE'S REVISED SELECTION CRITERIA FOR PRESIDENTIAL CANDIDATES (3-25-92).15, 38, A114

CA SECRETARY OF STATE'S ANOTHER REVISED LIST FOR SELECTION CRITERIA FOR PRESIDENTIAL CANDIDATES (5-11-92) . . . 36, A117, A123

OTHER AUTHORITIES

WEBSTERS NEW WORLD DICTIONARY, 3d COLLEGE ED. (NEW YORK: SIMON AND SCHUSTER, INC., 1988). 31, 59

WEEKLY READER SKILLS BOOK, "ELECTING A PRESIDENT,1992", PUB. NO. 218,(page 6). 4

9 WICKLIN, CAL. PROCEDURE (3d ED. 1985) APPEAL. § 418, pp 415-417) 57

A LIST OF OTHER COURT DECISIONS

IN THE ROGERS vs. EU CASE

Court	Decision	Date	Page
Super.Ct. of CA No.CV370371 (Sacto.) Writ of Mandate	Denial	5-12-92	A 1
Third Appellate Ct. No.C013733 (Sacto.) Case Appealed (CA)	Judgment (Order) Affirmed	7-23-93	A 2
Third Appellate Ct. No.C013733 (Sacto.) Rehearing Request (CA)	Denied	8-17-93	A 11
CA Supreme Court (San Francisco, CA) No. S034588 Review Request	Denied	9-29-93	A 12

GROUNDS FOR A WRIT OF CERTIORARI

Petitioner believes a hearing by the U. S. Supreme Court should be granted for the following reasons:

1) First of all, this case is timely and within the proper time frame! According to Rule No. 13 of the U. S. Supreme Court, Petitioner has 90 days in which to file her petition for a Writ of Certiorari from the date of denial of the petition for rehearing in the lower court. Since the last denial of Petitioner's request for a review and rehearing in the lower court was denied on September 29, 1993, by the Supreme Court of California (A 12), then Petitioner is well within the 90 days time frame for filing, in this court.

2) Petitioner believes that the statutory provision, to confer on this U. S. Supreme Court jurisdiction to review the judgment or decree in question by Writ of Certiorari, would be Petitioner's own U. S. Constitutional Rights, Amendments No. 1 and No.14. (A 92), which have been denied or ignored!

Petitioner feels that she has been treated by the California Government (CA SOS and her counsel), as if she didn't even have any Constitutional Rights. Consider the following quote taken from Respondent's Brief addressed to the Third Appellate Court (Sacramento, CA) on page 2, lines 21-25. It is as follows:

> "Rogers claims a 'Constitutional right to have her name listed on the California Primary Ballot as a Republican Presidential Candidate in June, 1992.' Appellant's Opening Brief (hereafter AOB) at page 3, lines 21-23. The Secretary of State finds no such right in the California or United States Constitutions." (Underlining added for emphasis).

Now, let's consider Appellant's reply to the above quote, by looking together at the following quote which was taken from Appellant's Reply Brief, on page 10, lines 24-28, and also page 11, lines 1-15. It is as follows:

> ". . . Yes, Plaintiff, Tennie Rogers does claim access to ballot placement as a matter of "right". Now, let's reread the last sentence above under the 'Quote'. 'The Secretary of State finds no such right in the California or United States Constitution.' (Under-

lining added for emphasis). These are 'strange' words indeed! In our Educational System, all children from the elementary grades on throughout college are being taught, 'Anyone born in the United States could one day become President.' (Weekly Reader Skills Book, 'Electing a President 1992,' Publication No. 218, page 6.) This is a Constitutional 'right'. Does the Secretary of State not know that any natural-born citizen of the United States who is at least 35 years of age and has been a resident of the United States at least 14 years, qualifies under the United States Constitution, Article II, Section 1(5) as a United States Presidential candidate if he or she so desires? (This was taken originally from the California SOS's own original qualification procedural list sent to the public in December, 1991.) (A 100). This is an American 'right' guaranteed by our United States Constitution! Plaintiff, Tennie Rogers, testifies that she meets all three of these requirements, hence, it is her U. S. Constitutional 'right' to run as a U. S. Presidential candidate! Since our U. S. Constitution is the Supreme Law of our land, it is wrong for any state or for that matter, any Secretary of that State to try to usurp his or her authority over, or try to negate an individual's own 'right' to ballot access as a United States Presidential candidate.

"For any state to do this is also tantamount to denying that individual, his or her right to 'freedom of speech' which is guaranteed under our Constitutional Bill of Rights, Amendment No. one. (A 92).

"In addition, the Secretary of State, by refusing to place Plaintiff's name on the Presidential Preference Primary Ballot, has denied TENNIE ROGERS her rights to

Equal Protections of the laws under U. S. Constitutional Amendment XIV, and Article I, Section 7 of the California Constitution by placing other similarly situated persons as Rogers, on the ballot without petition and refusing to place TENNIE ROGERS' name on the same ballot without petition. (A 92).

"Plaintiff also has an 'earned' right for ballot placement in CA by qualifying under the Secretary of State's original criterion number two, "Running in primary elections in other states.'"(A 102).

Petitioner contends that since she had qualified under the CA SOS's own original criterion No. two, then she most certainly had "earned" a California right for ballot placement; hence, the CA SOS should have been duty bound to honor her own original criteria to be used by her in selecting qualified Presidential candidates. To not honor this, Petitioner considers this to be a "breech of contract" with the public! So, considering the above, Petitioner can say that, yes, indeed, she had both a California right, and also, a United States Constitutional right for ballot placement as a Republican Presidential Candidate on the California Primary Ballot in 1992; but it was denied her! This was wrong!

3) Finally, just as in the case of Tashjian v. Republican Party of Connecticut (1986) 479 U. S. 208-237 (A 29-91), five of the U. S. Supreme Court Justices ruled that:

> ". . . The possibility of increases in the cost of administering the election system is not sufficient basis for infringing appellees' First Amendment Rights", (A 31-32);

in like manner, Petitioner states that neither should the cost of having to add Petitioner's name to the ballot, be sufficient basis for infringing Appellant, Tennie Rogers', First Amendment Rights!

After all, if the CA Secretary of State, in selecting Presidential Candidates, had honored her own original criterion number two, "Running in primary elections in other states", then Tennie Rogers' name would have been on the SOS's original selection list, as early on, as January, 1992. If this had happened, then there would never have been this litigation, in the first place.

The CA SOS had discriminated consistently against Appellant's numerous requests

from January through April, denying her ballot placement, in spite of Appellant's qualifying early on, in January, under the SOS's own selection criterion number two.

Since Petitioner's "earned" right for ballot placement in CA was always denied by the CA SOS, then Petitioner started her preparation in April, 1992 for litigation in May, 1992 asking for two things: Ballot Placement and Reparation. The first one was denied by the Superior Court in CA and the second request was ignored by this same Court. The Third Appellate Court Justices affirmed the Superior Court Justices's decision of denying the first request and by ignoring Appellant's Constitutional Rights in requesting the second item--a redress of grievances or reparation. Both should have been granted!

Petitioner believes that for these three major reasons, plus the reasons listed in the Questions Presented supra for Review, it should more than warrant Judicial Review by this Supreme Court of the United States!

Thank you for your consideration!

Respectfully submitted,

By Tennie B. Rogers

TENNIE B. ROGERS, IN PRO PER
6710 South Quaker Avenue
Tulsa, OK 74136 - 3801
(918) 496-9047

CITATION OF

CONSTITUTIONAL PROVISIONS, CA ELECTION CODES, ONE FEDERAL CASE AND ONE STATE CASE ON WHICH THIS, ROGERS vs. EU, CASE HINGES

	Page
UNITED STATES CONSTITUTIONAL BILL OF RIGHTS: AMENDMENT NO. 1 & NO. 14	A 92
CALIFORNIA CONSTITUTION: ARTICLE II, SECTION 5	A 93
CALIFORNIA ELECTION CODE:	
§ 1000(c)	A 94
§ 1002	A 94
§ 1003	A 95
§ 1202.1	A 95
§ 6010	A 97
§ 6013	A 97
§ 6311	A 98
§ 10015	A 99
FEDERAL DECISIONS: TASHJIAN v. REPUBLICAN PARTY OF CONNECTICUT (1986) 479 U. S. 208-237	A 29
CALIFORNIA STATE CASE: JUDICIAL OPINION BY JUDGE GUALCO IN THE LA ROUCHE vs. EU CASE NO. 369837	A 22
CALIFORNIA SECRETARY OF STATES' (ORIG.) SELECTION CRITERIA FOR CHOOSING U. S. PRESIDENTIAL CANDIDATES	A 100

INTRODUCTION

This is a Petition requesting a Writ of Certiorari for a Review and a Rehearing by the Supreme Court Justices of the United States on this case: ROGERS vs. EU. The grounds for a Writ of Certiorari regarding the settlement of important questions of law are listed supra on pages 2 thru 8 as well as those listed in the "Questions For Review" section at the beginning of this Petition.

Since the California Supreme Court denied a review request on September 29, 1993, then this request for a Writ of Certiorari is timely.

In the next section, the opinions of the Third Appellate Court of Sacramento County, in California will be addressed and challenged! By doing this, Petitioner believes that she will be able to show additional facts and arguments which supports the pertinent questions presented supra in the first section which warrants consideration of this case by the United States Supreme Court!

This case was an appeal by Tennie B. Rogers

(also known as Tennie Rogers) from a judgment of the Sacramento County Superior Court in an action instituted by Tennie B. Rogers against California Secretary of State, March Fong Eu, and the State of California for denying Plaintiff, Tennie Rogers her constitutional right, as well as her earned right to have her name listed on the California Primary Ballot as a Republican Presidential Candidate in 1992.

After the Appellate Court Hearing, on July 20, 1993, in Sacramento, CA, Plaintiff and Appellant, Tennie Rogers, had every reason to believe, and felt confident that, she had won the case! After all, had she not pointed out to the Appellate Court Judges the following, and to which the opposing side countered none of these points:

1) Dr. March Fong Eu, the California Secretary of State,(also referred to herein as SOS), had <u>broken her contract with the public</u>. As of December 31, 1991, the SOS's office sent out a list of criteria which the SOS would use in determining who was qualified as a "generally recognized candidate." This

list consisted of three criteria which she would consider. (A 102)

One month later, on January 31, 1992, the SOS sent out her list of chosen candidates, which consisted of only those candidates who had qualified under her criterion number one. (A 110). By totally ignoring her other two criteria, this was a breech of contract with the Public.

Plaintiff had qualified early on in January, 1992 under the SOS criterion number two--"Running in primary elections in other states." (A 102, A 130). Also under the SOS criterion number three--"Extensive coverage by the news media as a viable candidate," Plaintiff's news coverage was on par with that of Larry Agran and Eugene McCarthy whose names the SOS had already placed on her list of chosen candidates who had qualified under her criterion number one--"Qualification for Federal (FEC) matching funds." Plaintiff's news coverage was also on par with that of Lyndon LaRouche whose

name went on the ballot in March, 1992, but only after LaRouche took the SOS to Court and won! (See OSF: Exhibits "O", pages 567 - 594.)

2) Dr. Eu, the SOS had abused her discretion by not placing Tennie Rogers' name on her chosen list of qualified candidates, early on, in January, 1992. Plaintiff pointed out to the Appellate Judges that when the LaRouche case (No. 369837) came before the Superior Court Judge, Honorable Eugene T. Gualco in March, 1992, (A 22-26), Judge Gualco stated in his opinion that "Qualification for Federal Election Commission matching funds" could be used for ballot placement, but should not be used for exclusion of a candidate's name from the ballot, which was what the SOS had chosen to do. Judge Gualco stated, "The Court finds that respondent's mechanical application of this criteria is inconsistent with Elections Code Section 6311 and article II, section 5 of the California Constitution." In light of Judge Gualco's Opinion, Plain-

tiff considered this proof enough that Dr. Eu had abused her discretion, by not only failing to accept LaRouche as a candidate, but also by failing to accept Plaintiff as a candidate as well since both had already qualified under her criterion number two --"Running in primary elections in other states."

Neither LaRouche nor Plaintiff had qualified for Federal Matching Funds under SOS's criterion number one, however, both had qualified,early on, under the SOS's criterion number two--"Running in primary elections in other states." So, when Judge Gualco ordered ballot placement for Lyndon LaRouche, then the SOS should have followed through and placed Plaintiff's name on the ballot in March, but she did not!

3. At the Appellate Court Hearing in the Rogers vs. Eu case, and for the first time, the Counsel for the SOS said to the Appellate Court Judges that Dr. Eu admitted that Judge Gualco's opinion was correct and that

she had done wrong. All previous allegations by Plaintiff that the SOS had abused her discretion, had been denied repeatedly, previously, by the SOS's legal counsel in legal briefs. It was only at the Appellate Court Hearing of Rogers vs. Eu that the SOS's legal counsel told the Court Judges that Dr. Eu admitted that Judge Gualco's opionion was right and that she (SOS), had done wrong. The Appellant, Rogers' case "hinges" upon these legal facts and what Judge Gualco had to say!

4) Also noteworthy, is the fact, that one day after the LaRouche vs. Eu Court Hearing, Dr. Eu's legal counsel sent out a letter to the public on March 25, 1992, (A 114-116), stating that the SOS is now using a revised criteria for selecting a Presidential Candidate for ballot placement. She now lists four criteria and her number two now reads "Qualified for the ballot in twenty or more jurisdictions." (Underlining added for emphasis.)

Is the above what Judge Eugene T. Gualco had recommended in his Appellate Court Opinion, the day before? Of course not! Judge Gualco said that there are a host of other factors which should be considered, in addition to qualification for Federal Funding. Then he goes on to list three of these factors, the first of which reads: ". . .These factors include whether the candidate has appeared on ballots in other states." (A 25). (Underlining added for emphasis.)

Did Judge Gualco say 20 other states? He certainly did not; he said, ". . .in other states." To legally satisfy this requirement, it means that one only needs to have had his or her name on ballots in two other states, which is exactly identical to the requirements in the state of Louisiana. Is this recommended criterion of Judge Gualco not identical to that of the SOS's original criterion number two--"Running in primary elections in other states?" The answer is YES! So, for the SOS to revise

her criteria again on March 25, 1992, was "another breech of contract" with the public.

And finally, what ever happened to the "Grandfather Clause" of the law? Plaintiff contends that if the SOS is permitted to legally revise her criteria during the filing period, which Plaintiff doubts, then why wasn't Plaintiff, "Grandfathered In" under the SOS original criteria which was sent out to the Plaintiff on December 31, 1991. Plaintiff had qualified, early on, under the SOS's criterion number two--"Running in primary elections in other states." This fact alone should have warranted ballot placement for Plaintiff. Plaintiff also pointed out that even her news coverage was on par with that of Larry Agran and Eugene McCarthy, whose names the SOS selected for ballot placement, early on. Also as pointed out supra, Plaintiff's news coverage likewise was on par with that of Lyndon LaRouche whose name was ordered by the Court for ballot placement, without

any of them having to collect signatures for ballot placement.(See: OSF: Exhibits "O" pages 567-594.)

Now, would you believe that in spite of all of the above, the Appellate Court Judges all concurred, in their opinions in favor of Dr. Eu, the California Secretary of State? Plaintiff calls this PREJUDICE! And to add insult to injury, the Appellate Court is also asking the Appellant, who by all rights should have won this case, to even pay the costs of the California Secretary of State in this case. It is a sad day, indeed, when an American Citizen, any American Citizen, is punished for having pointed out the gross errors of our high level position elected officials, and then cannot even get FAIRNESS and JUSTICE in our own American Judicial System! DO AMERICAN CITIZENS NO LONGER HAVE THE RIGHT TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES? (U.S. Constitution, Amendments No. 1 and 14). (A 92)

APPELLATE JUDGES' OPINION vs. ARGUMENTS

Petitioner believes the above points alone,

should have won the case for her! However, since they did not, the facts and issues now should warrant a REVIEW and REHEARING IN THE U. S. SUPREME COURT. Plaintiff feels it is imperative for her to now answer all of the Appellate Court Judges' decisions made on this case on July 23, 1993. Even though the Judges' opinions are already quoted verbatim in the Appendix (A 2-10), Petitioner believes that she should answer each of the Judges' opinions and arguments, and in so doing, she will be adding additional facts and arguments supporting the pertinent questions presented to this U. S. Supreme Court for review and rehearing! This will be done by quoting first from the Judges' opinion, followed by Appellant's rebuttal--A REALITY CHECK. Thank you for your consideration of every point!

QUOTE: (A 2) "Tennie B. Rogers (plaintiff) appeals from an order denying her petition for writ of mandate. We shall affirm."

REALITY CHECK: Yes, Plaintiff had appealed from an order denying her petition for Writ of Mandate. However, Plaintiff feels, as stated supra, that the Judges' decision to affirm the

Superior Court Judge's decision is not warranted, but rather an Injustice to Plaintiff! Petitioner hopes to show this clearly and legally in the arguments which will follow:

QUOTE: (A2-3) "Elections Code section 6010 states: 'The Secretary of State shall place the name of a candidate upon the Republican presidential primary ballot when the Secretary of State shall have determined that such a candidate is generally recognized throughout the United States or California as a candidate for the nomination of the Republican Party for President of the United States'"

REALTY CHECK: To fulfill the requirements of the Elections Code, section 6010, the SOS chose three criteria which she would use in determining "generally-recognized" candidates. A copy of the SOS's criteria which she would use in choosing a Presidential candidate was sent to Plaintiff on December 31, 1991. (A 102).

As stated supra, one month later, on January 31, 1992, the SOS broke her contract with the public and changed her criteria to only No. one--"Qualification for Federal Election Commission Matching Funds" for ballot placement. (A 110-113).

On March 24, 1992, Judge Eugene T. Gualco

of the Sacramento Superior Court said in his opinion, "The Court finds that respondent's mechanical application of this criteria(SOS's criterion number one) is inconsistent with Elections Code section 6311 and article II section 5 of the California Constitution." (A 24). (NOTE: Election Code section 6010 listed above, (A 97), pertains to information regarding Republican Presidential Primary, whereas, section 6311 pertains to information regarding the Democratic Presidential Primary; (A 97), but the Judge's opinion listed above would apply to both Republicans and Democratic Candidates alike!)

QUOTE: (A 3) "'On or before February 1 immediately preceding a presidential primary election the Secretary of State shall publicly announce and distribute to the news media for publication a list of the candidates he intends to place on the ballot at the following presidential primary election. Following this announcement he may add candidates to his selection, but he may not delete any candidate whose name appears on the announced list.'"

REALITY CHECK: The SOS did, in a timely manner, announce to the public by way of a News Release on January 31, 1992, the names of the candi-

dates she had selected initially to appear on the June 2 primary election ballot. (A 110-113). There is nothing wrong with the timeliness of her list. What is wrong, however, is the list itself--it did not include all candidates who had qualified under the SOS's own criteria--No. 2 and No. 3. This list, as stated supra, consisted only of those candidates who had "Qualified for Federal Matching Funds." Also, as pointed out supra, Judge Eugene T. Gualco stated, "The Court finds that respondent's mechanical application of this criteria is inconsistent with Elections Code section 6311 (A97) and article II, section 5 of the California Constitution." (A 93). The SOS should have listed all candidates who had already qualified under her three criteria. Plaintiff as well as Lyndon LaRouche had both qualified early on in January, but the SOS refused to accept either one of us, and it was only after Lyndon LaRouche took the SOS to Court that then she was ordered by Judge Gualco to put Lyndon LaRouche's name on the ballot. This should have told the SOS something. Why didn't

she then, immediately, put Plaintiff's name on the ballot? She could have, and there was plenty of time. Instead, the next day after the Court Hearing, she changed her original requirements, "beefed-up" her requirements (A114-116), called the "revised" requirements "liberal" (A 122), and sent the list out to the public, saying that if you think you qualify now as a candidate, then let me know. (No SOS should ever be permitted to get by with changing her "yardstick of measurement", if you please--her criteria for determining who is qualified for ballot placement, during any filing period!) Changing her criteria during a filing period should be illegal!

QUOTE: (A 3) "Plaintiff's petition tendered the claim that she was entitled to have her name placed on the ballot for the June 1992 primary election as a Republican party candidate for President of the United States. The petition alleges plaintiff submitted a statement of candidacy to defendant March Fong Eu, the Secretary of State, in December 1991 and again early in January 1992."

REALITY CHECK: True. Even, early on, in January, 1992 Plaintiff had already qualified for ballot placement in the states of New Hampshire, Kansas, Colorado, and Minnesota. See Plain-

tiff's letter to SOS dated January 6, 1992. (A 129). This qualified Plaintiff under the California SOS's criterion number two. The problem was not with lack of qualifying by Plaintiff, but rather the problem was with the SOS refusing to honor her own criteria for ballot placement!

QUOTE: (A3-4) "Exercising the discretion vested in her, defendant concluded plaintiff's candidacy did not meet the criteria set forth in Elections Code section 6010. (Further statutory references to sections of an undesignated code are to the Election Code.) Accordingly, defendant did not include plaintiff's name on the list defendant issued on January 31, 1992, of Republican Party candidates whose name would appear on the June 1992 primary ballot."

REALITY CHECK: It is absolutely FALSE for the SOS to conclude that Plaintiff's candidacy did not meet the criteria set forth in Election Code section 6010. When Plaintiff had already qualified early on in January, 1992 by already having her name on four other state ballots--New Hampshire, Kansas, Colorado, and Minnesota, then she most certainly did qualify under the SOS's own original criterion No. two--"Running in primary elections in other states." Plaintiff finds it strange indeed that she has to

keep on defending herself, especially in light of the proof already listed above. It is also strange to Plaintiff that the Appellate Court Judges, at this point in their opinion, failed to set the record straight by refusing to tell anything that was said at the Appellate Court Hearing. The legal counsel for the SOS said that the SOS ADMITTED THAT Judge Gualco's opinion was correct and that she had done wrong. To admit that Judge Gualco's opinion was correct meant that she had done Plaintiff wrong as well. Search the Appellate Court Judges' opinion. (See Appendix: A 2-10). Why didn't the Appellate Court Judges set the record straight at this point in their opinion and state the facts that the SOS now admits that she had done wrong! If the Judges are going to tell any of the facts, then why not tell all of the facts and finally set the record straight! For the Appellate Court Judges to totally ignore all of this evidence presented at the Court Hearing and then to finally affirm the case in favor of the SOS is shocking and unthinkable, to say

the least! You can't imagine how Plaintiff felt when she read the Judges' opinion. Where is FAIRNESS, EQUALITY, and JUSTICE to be found these days? Do the Judges not care any more about the individual's Constitutional Rights --No. 1 and No. 14? (A 92)

Another wonderment, the Plaintiff has, is why the Appellate Court Justices are requesting that what they did have to say in their opinions, is NOT TO BE PUBLISHED? I, the Plaintiff and Appellant, TENNIE ROGERS, am requesting that not only the Judges' Opinions, but also all of Plaintiff's rebuttals be published as well, in the Official California Legal Publications! This involves a legal issue of continuing public interest! So far, at this present writing, this request has not been granted. (A 17-21b).

QUOTE: (A4-5) "Plaintiff could have sought to have her name placed on the ballot by securing a sufficient number of signatures from those voters registered as affiliated with the Republican Party. (§ 6021.[1] (Footnote reads: Section 6013 (Not 6021), states: 'Any unselected candidate desiring to have his name placed on the presidential primary ballot shall have nomination papers circulated in his behalf. In order to qual-

> ify his name for placement on the presidential primary ballot, the candidate's nomination papers shall be signed by voters registered as affiliated with the Republican Party equal in number to not less than 1 percent of the number of persons registered as members of the Republican Party, as reflected in the report of registration issued by the Secretary of State in January of the year of the presidential primary election.'"

REALITY CHECK: This is an absolutely absurd request, especially since Plaintiff had already qualified for ballot placement under the Secretary of State's original criteria! Why should any presidential candidate spend his or her precious campaign time trying to collect 50,000 signatures on petitions to get his or her name on the primary ballot in California, especially in lieu of the fact that he or she had already qualified for ballot placement! I consider this inappropriate for either the opposing side or even the Appellate Court Judges to suggest that since Plaintiff wasn't chosen by the SOS, then she should have considered the alternative method for ballot placement. The problem lies, not with Plaintiff's failure to choose an alter-

native method for ballot placement, as she had already qualified for placement, but the problem lies with the SOS failing to honor her own contract with the public by not accepting all candidates who had qualified under her own criteria for ballot placement. Even knowing this, and also knowing that the SOS had admitted in Court, by way of her legal counsel, that she had done wrong, it is certainly illogical for the Appellate Judges to not even mention this in their opinion. Rather, instead of mentioning that the SOS had done wrong and should have placed Plaintiff's name on the ballot, early on, they hinted that Plaintiff could have chosen the alternative method of collecting signatures, for ballot placement but she did not. It is worthy of note here, that former President George Bush and now President Bill Clinton neither one chose this alternative method of ballot placement. It is also worthy of note, that neither did Larry Agran, Eugene McCarthy, nor Lyndon LaRouche, to name a few, choose this method of ballot placement. So why should Plaintiff

have to choose this alternative method, either, in order to have ballot placement? There is suppose to be EQUALITY and JUSTICE under the law--not UNFAIRNESS and INEQUALITY as is demonstrated here!

QUOTE: (A4-5) ". . .Instead, plaintiff persisted in her efforts to be placed on the ballot under the provisions of section 6010. From February through April 1992, plaintiff continued to send to defendant various items of correspondence designed to show plaintiff was entitled to be placed on the ballot because her candidacy was 'generally recognized throughout the United States or California . . . .' (§ 6010.) Defendant remained unpersuaded and continuously rejected plaintiff's efforts to have her name appear on the ballot for the June primary election."

REALITY CHECK: Here again the Appellate Judges in their opinion, are still refusing to tell all the facts --that the SOS, by way of her legal counsel, admitted in the Court Hearing that she had done wrong. To anyone reading only the Judge's opinion, however, he or she would be inclined to think that the SOS had done no wrong, and that it was all Plaintiff's fault for lack of ballot placement. THIS IS NOT TRUE! AND THE JUDGES, THEMSELVES, KNOW THAT THIS IS NOT TRUE! It is a puzzlement

indeed, to Plaintiff to understand why the Judges chose to be silent in their opinion on the fact that the SOS's counsel told the Judges in the Courtroom that the SOS admitted that she had done wrong by not honoring her own criteria, just as Judge Gualco, in essence had said. WHY DID THE JUDGES CHOOSE TO REMAIN SILENT ON THIS POINT AND FAIL TO RECORD IT ANYWHERE IN THEIR OPINION? WHY?

QUOTE: (A5-6) "On May 8, 1992, plaintiff commenced the underlying proceeding pursuant to section 10015. Subdivisions (a) (1) and (2) of that section state in relevant part: 'Any voter may seek a writ of mandate alleging that an error or omission has occurred or is about to occur in the placing of any name on, or in the printing of, a ballot, sample ballot, voter pamphlet or other official matter, or that any neglect of duty has occurred or is about to occur. [¶] [A] preemptory writ of mandate shall issue only upon proof that the error, omission or neglect is in violation of this code or the Constitution and that issuance of the writ will not substantially interfere with the conduct of the election."

REALITY CHECK: Yes, on May 8, 1992 Plaintiff did commence the underlying proceeding pursuant to section 10015. Plaintiff started preparing her petition for a writ of mandate in April, 1992. The very minute that Plain-

tiff had her petition ready to present it to the Court, she and her husband flew immediately to Sacramento where Plaintiff presented her prepared petition for the writ of mandate, to the Superior Court of Sacramento County.

Now let's have a "rerun" of all of paragraph 2 of the CA Election Code §§ 10015 (A 99), on which a writ of mandate was to be granted. It reads:

> "[A] peremptory writ of mandate shall issue only upon proof that the error, omission or neglect is in violation of this code or the Constitution
>
> and
>
> that issuance of the writ will not substantially interfere with the conduct of the election." (Underlining added for emphasis.)

The above quoted sentence consists of two parts joined together by the conjunction "and". In the definition of the word "and", the Webster's New World Dictionary, Third College Edition, (1988), states:

> "used to join elements of equal grammatical value." (Underlining added for emphasis.)

In light of this definition, we must all agree that in the quotation under consideration, then

everything that was said before the conjunction "and" must carry equal weight and equal value to the part of the sentence which follows the conjunction "and". This definition should mean then that it would be illegal to consider only the last half of the above quote and to totally disregard or ignore the first half of this compound sentence, giving it "no value" or "no consideration"! Therefore, now considering the first half of this compound sentence, it definitely warrants a writ of mandate, since Judge Gualco gave the proof that was needed when in essence he stated that the SOS's mechanical application of choosing only her first selection criterion was inconsistent with both the Elections Code section 6311 and also article II, section 5 of the California Constitution. (A 24). This further means, that since both halves of this compound sentence under consideration, must bear equal value, then 50% of this sentence warranted issuance of the writ of mandate. That leaves only the other 50% or the other half of the

sentence to consider. Now let's look again at the last half of this sentence being considered. It reads:

> "...and that issuance of the writ will not substantially interfere with the conduct of the election." (§ 10015.) (Underlining added for emphasis.)

Plaintiff notes the following points:

1) Please note that the above quote does not say that a writ of mandate could not interfere at all with the conduct of the election, but what it does say is that it will not substantially interfere with the conduct of the election. Also it is worthy of note that the word "substantially" is a "non-specific", "vague" term in meaning; thus, being immeasurable, and a relative term, it should be illegal to describe something legally by using "vague" terminology. This is neither "good science" nor "good law" to use vague terminology in describing something scientifically and/or legally.

2) Secondly, the "Elections Code" from whence the quotation came, is not a quotation from the California Constitution. It is my understanding that the Election Code was drawn up

to help implement or to help understand the constitution. We must never forget that the Election Code, itself, does not bear equal weight with the California Constitution. The CA Election Code, is not the CA law! In like manner, neither does it bear equal weight to the U. S. Constitutional Rights, nor should it supersede or go beyond the U. S. Constitutional Rights. No, and individuals' U. S. Constitutional Rights must come first and not be negated!

3) Next, Plaintiff contends that, in order to correct the CA SOS's error, omission, or neglect, then even if it should have required changing the voting date in California, as well as, reprinting of the California primary ballots, then that should have been done! Plaintiff deserved having her name on the California primary ballots in 1992. "The increases in the cost of administering the election system was not a sufficient basis for infringing upon Plaintiff's U. S. Constitutional Rights--No. 1 and No. 14." (A 92)

The last point mentioned supra, was first brought out so very well in the Tashjian v. Republican Party of Connecticut (1986) 479 U. S. 208, 209. (A 29-91). It reads:

> "The possibility of increases in the cost of administering the election system is not a sufficient basis for infringing appellees' First Amendment rights." (Underlining added for emphasis.) (A 31-32).

Plaintiff believes that all of the above points should have warranted ballot placement for her in 1992. However, since the primary election in CA in 1992, went forward without Plaintiff's name on the ballot, then Plaintiff is now asking for two things:

1) Ballot placement for Plaintiff, Tennie Rogers in the next upcoming CA Presidential Primary Election in 1996, since she had earned ballot placement for 1992, but it was never granted, and also,

2) Reparation in the amount of ten million dollars for a redress of grievances by the CA State Government (CA SOS).

QUOTE: (A 6) "Defendant resisted the petition on numerous grounds, including that it was impossible to place plaintiff's name on the ballot at such a late date without 'substantially (interfering) with the

> the conduct of the election' (§ 10015.) Defendant asserted '[t]ens of thousands' of absentee ballots had already been cast and returned as of the time plaintiff filed her petition for writ of mandate."

REALITY CHECK: The above information quoted by the Appellate Court Judges was taken from the four page letter which was addressed to Honorable James T. Ford, Superior Court of California, County of Sacramento, and was signed by Anthony L. Miller, Chief Counsel for SOS. (OSF, pages 632-635.) Plaintiff would like to "back-up" and start quoting from the OSF, page 635) or (A 125), and one sentence prior to what the Appellate Judges quoted above. It now reads:

> "'Special absentee' voters began casting ballots since as early as April 3, 1992. Tens of thousands of regular absentee voters have already cast ballots by mail or at the offices of county clerks and registrars." (Underlining for emphasis.)

Plaintiff asks, If 'Special absentee' voters began casting their ballots since as early as April 3, 1992, then it stands to reason that these ballots were all printed somewhere, sometime before April 3, 1992, is this not correct? If this reasoning is correct, and it is

then Plaintiff contends that this should be illegal! Let's consider just one more point then we'll look closely together at the data on this issue. Why were voters already voting on April 3, 1992 when prospective Presidential candidates were suppose to legally have until April 4, 1992 to qualify and to get their names on the ballot? This suggests to Plaintiff that someone was not following the rules and even the printing of the ballots as mentioned supra, began too early. Isn't this all illegal?

Now let's look together at some data. On January 31, 1992, Dr. March Fong Eu sent out her News Release to the public, and on page two of her News Release beginning with tne last sentence on that page, it reads: "Should other candidates qualify after today, Dr. Eu may add their names to the list until April 4, the day she must certify the presidential candidate list." (A 113). This happens to be exactly 60 days prior to voting, which is what the California Election Code, Section 1202.1 (b) calls for.

Quoting again from Dr. Eu's News Release dated January 31, 1992, on page 2, she stated that any candidate who wished to withdraw from California's primary may do so by filing an affidavit requesting that his or her name be removed and the affidavit must be received by March 30, the 64th day before the election. (A 112). (Underlining for emphasis.)

It is worthy of note that Dr. Eu said March 30th was the final date for withdrawal of one's name from ballot placement, not the final date for ballot placement. Yet, Dr. Eu's legal counsel sent out a letter to the public on March 25, stating that if one thinks he or she qualified for ballot placement, then in order to be considered for selection, SOS must receive your reply by March 30, 1992. (Exhibit T 1),(OSF, page 616), or (A 116). Is this what Dr. Eu had said to the public earlier in her News Release on January 31, 1992? (A 113). No, it is not. She had said that one had until April 4, 1992, which was exactly 60 days before the voting date and which also coincides with the requirements in the Califor-

nia Elections Code, Section 1202.1 (b).

So Plaintiff is puzzled as to why the push was on for the ballots to be printed up early --too early, and also with the voting taking place--too early. This should certainly be illegal.

Now regarding the above, it was also referred to by the Respondent in her RESPONDENT'S BRIEF which was presented to the Appellate Court. See Page 3, lines 9-16 of her brief. It reads as follows:

> "By May 8, 1992, the date the petition for writ of mandate was filed, issuance of a writ of mandate would have substantially interfered with the conduct of the election since absentee voters were already in possession of ballots and some had already been returned to election officials. (RP 635, Part 2). See §§ 1000(c), 1202.1 (April 3, 1992, military and overseas voters may begin to vote) and 1002, 1003 (May 4, 1992, all other absentee voters may begin voting). (Underlining added for emphasis.) (A94-95).

Plaintiff notes that the date of April 3, 1992 was mentioned here also. (Underlining added for emphasis.) As explained supra, this should be an illegal act. Note the following:

Now regarding the California Elections Code § 1000c(1), it reads:

"A member of the armed forces of the United States or any auxiliary branch thereof is considered to be a 'Special Absentee Voter.'"

This section 1000c(1) merely establishes the fact that the military are entitled to receive an absentee ballot. (A 94).

Next, Section 1202.1 of the California Election Code was referred to above. The legal counsel for Dr. Eu has misinterpreted or misconstrued it to mean that the military and overseas voters must already have their ballots in hand and ready to vote by April 3, 1992. (Underlining added for emphasis.) Is this what the California Elections Code says? No, it is not! Let's look at this section 1202.1 together. It reads as follows:

"1202.1 Application for special absentee ballot; processing procedures." (Underlining added for emphasis.)

Please note that this refers to applying for a special absentee ballot, which is a far cry from the ballot itself. Let's read on:

"(a) Notwithstanding any other provision of the law, a special absentee voter who qualifies pursuant to this section may apply for a special absentee voter ballot.

"Any application made pursuant to this section which is received by the clerk prior to the 60th day before the election, shall be kept and processed on or after the 60th day before the election." (Underlining added for emphasis.) (A 95).

Please note in the above reference that no where does it state that the person is to receive the ballot prior to the 60th day before the election. No where! In fact, the clerk was not even suppose to process any application which came to her desk prior to the 60th day before the election. But rather, she was suppose to hold all applications received early and process them either on or after the 60th day before the election. This means that no application was even to be processed before April 4, 1992. So Plaintiff asks the question again, how could people be voting on April 3, 1992, when the clerk was not even suppose to proccess an application blank for a special absentee ballot until April 4, 1992?

The next paragraph from the California Elections Code, § 1202.1(b) reads as follows:

"(b) If a special absentee voter submits an application containing a statement that provides that due to military or other con-

tingencies that preclude normal mail delivery, as specified by the voter, the voter cannot vote an absentee ballot during the normal absentee voting period, and the voter is otherwise qualified to vote as a special absentee voter, the clerk shall immediately send the voter a ballot in the form prescribed and provided by the Secretary of State, or a ballot and voter registration card if required by section 1200. The clerk shall send with the ballot a list of all candidates who have qualified for the ballot by the 60th day before the election and a list of all measures which are to be submitted to the voters and to which the voter is qualified to vote. The voter shall be entitled to write in the name of any specific candidate seeking the nomination or election to any office listed on the ballot." (Underlining added for emphasis.) (A 95-96).

Now in analyzing the above Elections Code, if one read only to and including the first underlined section which reads, "...the clerk shall immediately send the voter a ballot", then this would literally mean that a ballot could actually be sent out at any time. But wait, in analyzing the above, it is contingent upon the next underlined part which reads, "...The clerk shall send with the ballot a list of all candidates who have qualified for the ballot by the 60th day before the election . . ." This certainly coincides with the information

listed supra which stated that all candidates had the right to try to qualify up until 60 days before the election or as Dr. Eu said previously, April 4, 1992. (She had stated this in her News Release to the public on January 31, 1992.) (A 113). Now, these facts should have precluded or prevented the county clerks in CA from mailing out any ballots to anyone prior to April 4, 1992. So, since not even a list of the candidates was to be sent out to anyone before April 4, 1992, then pray tell, how could the printing presses be started rolling, printing ballots, before April 4, 1992! This should have been illegal!

QUOTE: "Following hearing and argument, the (A 6) superior court, without comment, denied the petition. Plaintiff appeals."

REALITY CHECK: Plaintiff considered the CA Superior Court Hearing in Sacramento County, to be a very PREJUDICIAL TRIAL--from beginning to end! Plaintiff was only permitted to make about one point and was given no time at all to ask the opposing side some very pertinent questions. Plaintiff considered this to be very UNFAIR!

QUOTE: (A6-7) "On appeal, plaintiff continues to claim defendant abused her discretion in refusing to place plaintiff's name on the ballot for the June 1992 primary election.

REALITY CHECK: Yes, as pointed out supra, in a clear manner, Plaintiff showed proof that the SOS had abused her discretion by refusing to place Plaintiff's name on the ballot; and she had pointed out clearly, supra, that Plaintiff had qualified early on under the SOS's own original selection criterion number two--"Running in primary elections in other states."

QUOTE: (A 7) "Unfortunately for plaintiff, her claim avails her nothing."

REALITY CHECK: Plaintiff contends that her claim should have availed her two things:

1) Ballot placement in June, 1992, and since it did not, then it should avail her ballot placement for the next upcoming Presidential Primary Election in CA in 1996, and
2) Reparation--in the amount of ten million dollars.

PRINCIPLES ARE INVOLVED HERE! Plaintiff's Constitutional Rights No. 1 and No. 14 of the Amendments, had either been denied her

or ignored! As Plaintiff pointed out to the Appellate Court Judges at the Court Hearing, that, by the SOS denying Plaintiff her right for ballot placement, then she was denying Plaintiff her right to freely communicate and to campaign daily throughout the entire month of May. (Constitutional Amendment No.1)(A 92). In fact, even in the month of April, Plaintiff had to cut short her campaigning while in the state of Kansas and come home so she could start preparation to initiate this court case. To deny Plaintiff ballot placement has been no small infringement upon Plaintiff's Constitutional Rights! By the CA SOS not showing equality of treatment to Plaintiff, then she was not honoring Plaintiff's Constitutional Amendment Right No. 14. (A 92). This has been no small infringment upon Plaintiff's Constitutional Rights. The Primary Ballot for June, 1992 in CA should definitely have had Tennie Rogers' name on it as a Republican Presidential Candidate! Hundreds of hours that Plaintiff had spent, early on, campaigning in the state of California were now in vain. Plain-

tiff had considered every second of her time out campaigning before the people was very valuable. Just ask any candidate, who has ever tried to run for a federal office and I'm sure each one would say that he or she considered his or her time to be extremely valuable, as well. According to the news media, when Diane Feinstein and Barbara Boxer were both running in California for the senatorial (U.S.) seats in 1992, they both, it was reported, had each spent ten million dollars apiece in campaigning just to try to win the primary election in California. How valuable do you think each of these senatorial candidates in California would have considered their campaign time to be worth? Likewise, just how valuable do you think either former President George Bush or now President Bill Clinton to have considered their campaign time to be worth, to say nothing about all of the other Presidential candidates, who likewise ran on primary ballots for the office of the U. S. Presidency! I feel confident that

each and every candidate who was running for the Office of the U. S. Presidency would be in accord, that his or her campaign time was extremely valuable! So, when Plaintiff was denied ballot placement, this took away her right to freely communicate before the public campaigning and asking the public to vote for her in the upcoming Primary Election in CA--thus denying Plaintiff her right to exercise her valuable campaign time! In lieu of these facts, Plaintiff is requesting reparation in the amount of ten million dollars. Since the U. S. Constitution, Amendment Number 1, gives Plaintiff her right to petition the Government for a redress of grievances, then her Constitutional Rights should not be ignored!

QUOTE: (A 7) "First the issue is moot in light of the fact the primary election has long since passed. '[Section 10015] is designed to correct preelection ballot errors [.] . . .[¶] [P]ostelection relief is governed either by quo warranto proceedings . . . or by Elections Code section 20021. [Citation.]'(Fn. omitted); Salazar v. City of Montebello (1987) 190 Cal. App. 3d 953, 956-957.)2 (Footnote: 2Section 20021 specifies the grounds for contest of an election.)"

REALITY CHECK: In answer to the above, Plain-

tiff knows, and the Appellate Court Judges should know that this issue is not moot in light of the fact that the primary election is past. Consider the following:

1) Even though the primary election of 1992 is past, this case is still worthy of consideration and further discussion! Since Plaintiff's Constitutional Rights were infringed by the CA SOS then this case needs to be further addressed, hence it is not moot! Plaintiff's request for both ballot placement and reparation were both timely and occurred before the Primary Election in June, 1992. And even if the ballots would have had to be reprinted in order to grant Plaintiff ballot placement, then the extra expense would not have been a sufficient basis for infringing upon Plaintiff's Constitutional Rights! The CA SOS should have honored Plaintiff's Rights early on, but since she had not, then the Superior Court Judge should have honored her rights; but since, he likewise, did not, then the problem lies with them and not with Plain-

tiff. Plaintiff contends that even though the CA Primary Election of June, 1992, is passed, then the court could still order ballot placement for Plaintiff for the next upcoming Presidential Primary Election in CA in 1996. This could and should now be granted!

2) Now regarding Plaintiff's second request for reparation, please note that the U. S. Constitution assures Plaintiff of her Constitutional Right to petition the CA State Government for a redress of grievances. Plaintiff has already mentioned the grievances many times, supra, and Plaintiff believes that reparation for ten million dollars should now be granted also.

3) Even though the time frame now is post-election, Plaintiff is not asking for relief for anything that has happened since the primary election on June 2, 1992. What Plaintiff is asking for however, is reparation in the amount of ten million dollars for grievances caused Plaintiff by the SOS of CA which took place prior to the primary election date of June 2, 1992--for Pre-election, not Post-elec-

tion infringment of Plaintiff's Constitutional Rights!

QUOTE: (A7-8) "Second, to the extent plaintiff believes she was 'generally recognized throughout the United States or California as a candidate' for President, and that defendant abused her discretion in concluding otherwise, it was incumbent upon plaintiff to bring her petition for writ of mandate at the earliest possible date. Instead, plaintiff waited (Underlining added for emphasis), until after five million sample ballots had been printed, most of them had been mailed, and tens of thousands of absentee ballots had been cast before seeking relief in the superior court."

REALITY CHECK: Plaintiff, did not wait, as explained supra, but she brought her petition to the Superior Court just as soon as possible for her to do so, after she had heard the final word from the CA SOS that she, (SOS), was not placing Plaintiff's name on the CA Primary Ballot in June, 1992. Also, since the Superior Court accepted Plaintiff's petition into the Court system in the first place, suggests to Plaintiff that it was not too late to petition the CA State Government for a redress of grievances, (reparation), and ballot placement. This was Plaintiff's Constitutional Right!

QUOTE: (A 8) "Although the superior court's order is silent as to the basis for its denial of the petition for writ of mandate, it appears clear the court could not have granted plaintiff the relief afforded by section 10015. That is, a writ may issue only if it would not substantially interfere with the conduct of the election. (§ 10015, subd. (a) (2).) Given the belatedness of plaintiff's mandamus proceeding, the superior court could not have granted plaintiff the relief she sought without running afoul of section 10015. Accordingly, we find no error in the trial court's determination.[3]"

REALITY CHECK: It has been proven that Plaintiff's Constitutional Rights have been denied. It has also been shown that Plaintiff did come to the Court at her earliest possible date after the SOS's final decision of still denying Plaintiff ballot placement. And it has been shown that voters received their California ballots too early and special absentee voters even started voting too soon! This should be illegal! Plaintiff sought relief for ballot placement and also for reparation. One was denied and the other was ignored! Both should have been granted!

Then again, it has also been pointed out supra that in the Tashjian v. Republican

Party of Connecticut Case (1986) 479 U.S. 208, 209, the following is noteworthy:

> ". . .The possibility of increases in the cost of administering the election system is not sufficient basis for infringing appellees First Amendment Rights."

Plaintiff "STANDS FIRMLY" on her First Amendment Constitutional Rights! Plaintiff is assured by the U. S. Constitution that she has a right to petition the Government for a redress of grievances! Then for the Superior Court Judge, as well as the Appellate Court Judges to just dismiss this case, in light of Plaintiff's evidence is certainly UNJUST!

QUOTE: (A 8) "[3]In the prayer of her petition plaintiff demands 'reparation fees in the amount of two million dollars to make amends for the Secretary of State continuously denying the candidate, Tennie Rogers, her constitutional rights to have her name placed on the California Republican Presidential Primary Ballot."

REALITY CHECK: Yes, in the Original Superior Court File, page 37, lines 4-23, Plaintiff asked originally for reparation fees in the amount of two million dollars as well as for ballot placement. However, since Plaintiff was denied her "earned right" for ballot placement, and

since Plaintiff's name was not placed on the California Primary Election Ballot, then Plaintiff is now asking for ten million dollars for reparation. This was requested several times in both the Appellant's Opening Brief and again in the Appellant's Reply Brief.

QUOTE: (A8-9) "...There is no other mention in the petition of 'reparation' or damages nor is there any allegation of a substantive basis for such relief. [T]he prayer is no part of the statement of the cause of action." (Berg v. Investors Real Estate Loan Co. (1962) 207 Cal.App.2d 808, 815); Nemeth v. Trumbull (1963) 220 Cal.App.2d 788, 791.)"

REALITY CHECK: THIS IS SIMPLY NOT TRUE! Reparation was requested not only in the prayer for relief, in the Original Superior Court File on page 37, lines 11-28 and page 38, lines 1-2, but even before the prayer Plaintiff requested that what was listed in the prayer be incorporated in the section above, herein by reference as if set forth herein in full. Please note that the prayer started on page 35, line 28; the following quotation, however, was from the previous section which reads as follows:

"15. For the foregoing reasons, Petitioners are entitled to a Peremptory Writ of Mandate pursuant to Elections Code Section 10015 requiring the relief stated in the prayer below which is incorporated herein by reference as if set forth herein in full and requiring the Secretary of State to take all steps necessary to place the name of Tennie Rogers on the Republican Presidential Preference Primary Ballot for June 2, 1992." (OSF, page 34, lines 25-28 and also page 35, lines 1-3.)

Now even if Plaintiff, however, had only listed her request for reparation in the OSF prayer, without requesting that it be counted in full in the previous section as well, which she has shown, it should still have had no less effect than if she had mentioned it repeatedly in every section.

Now let's analyze the last half of the Judges' opinion quotation sentence listed above, it reads as follows:

" . . .nor is there any allegation of a substantive basis for such relief."

THIS IS SIMPLY NOT TRUE EITHER! In the Original Superior Court File page 37, lines 11-28 and page 38 lines 1-2 it reads as follows:

"D. Also for reparation fees in the amount of two million dollars to make amends for the Secretary of State continuously denying the candidate, Tennie Rogers, her constitutional rights to have her name placed

on the California Republican Presidential Primary Ballot. In fact, even two million dollars could not totally compensate for the emotional drain that the Secretary of State has caused the candidate, Tennie Rogers by consistently denying her, her constitutional rights to have her name placed on the upcoming June, 1992, Republican Presidential Primary Ballot.

"The above issue is only one of the issues; the time factor should also be addressed. Needless to say, hundreds of hours of the candidate's time, were having to be spent in the preparation of this request for a Writ of Mandate by the Court. This is very valuable time, which the candidate, could, should, and would have been using out on the campaign trail, if it were not for this Court case. At this point in time, the candidate had hoped to be campaigning in both the states of Nebraska as well as in California if she were not being delayed by having to take this case to Court in order to speak out for her own Constitutional Rights--and speak out she must!"

In addition to the above from the OSF, Plaintiff also mentioned reasons for relief in her Appellant's Opening Brief, page 3, lines 6-12. It is as follows:

"Now that more time has elapsed since then, (The Superior Court Hearing), and the Primary voting in California went forward without Tennie Rogers' name on the Ballot as a Republican Presidential Candidate, thus hindering her from utilizing the precious time in the rest of the month of May where she could have spent every day campaigning before the people, then Plaintiff, has decided to ask for . . . ten million dollars. THIS IS NO SMALL THING TO DENY THE PLAINTIFF, TENNIE ROGERS, HER RIGHT TO TRY FOR

THE HIGHEST OFFICE IN OUR LAND--U. S. PRESIDENT."

The substantive basis just listed above as well as early on in this paper, to say nothing of the many requests listed in Appellant's Reply Brief is ample, yes, more than ample reason to warrant the relief requested, reparation in the amount of ten million dollars! Next, the Appellate Court Judges mentioned:

"'The prayer is no part of the statement of the cause of action.'"

NOW, THIS JUST ISN'T TRUE, EITHER, AS EXPLAINED SUPRA! The "cause of action" has been well explained above. Plaintiff had even requested in her OSF that the prayer be incorporated in the section above, "herein by reference as if set forth herein in full."

QUOTE: (A 9) ". . .We give plaintiff's demand for 'reparation' no further consideration."

REALITY CHECK: This is not Justice to refuse to consider redress of grievances. The U. S. Constitution Amendment Number One gives Plaintiff her right to petition the Government for a redress of grievances. Plaintiff "stands" on her Constitutional Rights, Numbers One and also Fourteen, which have both been infringed!

QUOTE: (A 9) "Plaintiff also takes issue with the manner in which the hearing on the petition was conducted. She claims she was denied a fair trial by the superior court's refusal to allow her to testify fully and to cross-examine counsel representing defendant. However, there was no reporter present at the hearing and thus no transcript is available to review the merits of plaintiff's claims. In the absence of an adequate record, this court is in no position to review the manner in which the superior court conducted the hearing." (9 Wicklin, Cal. Procedure (3d ed. 1985) Appeal. § 418,pp 415-417.)

REALITY CHECK: The Superior Court Trial was a very PREJUDICIAL TRIAL from beginning to end as already explained supra in this report.

QUOTE: (A 10) "The judgment (order) is affirmed. The defendant shall recover costs.[4]"

REALITY CHECK: Needless to say, Plaintiff considers this Judicial Opinion to be most UNFAIR and UNJUST! As pointed out supra in this paper, "It is a sad day, indeed, when any American Citizen, cannot get Fairness and Justice in our own American Judicial System!

QUOTE: (A 10) "[4]petioner makes numerous references in her brief on appeal to LaRouche v. Eu (Super.Ct. Sacto. County, 1992, No. 369837). We construe such references as a request for judicial notice. In light of our determination herein, judicial notice is unnecessary and on that basis the request is denied."

REALITY CHECK: Plaintiff is really puzzled as to, "Why did the Appellate Court Judges not wish to take judicial notice of anything that Judge Gualco had to say?" They all know full well, after the Appellate Court Hearing, that everything that Judge Gualco had to say in his Judicial Opinion has a strong bearing on this case, likewise, as explained supra, in clear details listed above! They should also know that Plaintiff has a right to quote from other cases and she also has a right for them to listen to what she had to say. Now for the Appellate Court Judges to refuse to listen to her, or to refuse to take Judicial Notice of the Court Case from which Plaintiff had quoted, is not "equality under the law", but is Prejudicial instead!

Even the opposing side, as well as the Judges themselves, quoted from other cases, so Plaintiff contends that it is very Prejudicial indeed for them to not give her the same right and to not even listen to what Judge Gualco had to say. This Court case "hinges" upon Judge Gualco's Judicial Opinion in the

LaRouche vs. Eu Case No. 369837 of the Superior Court in Sacramento County, CA, and the Appellate Court Judges all know this! THIS IS NOT JUSTICE TO TOTALLY IGNORE THESE FACTS!

CONCLUSION

A legal problem can never be solved by tossing out half of the facts and using only the other set of facts. Try solving any mathematical problem by tossing out all the numbers on either side of the equal sign. It would become insolvable. In like manner to toss out or simply ignore half of the facts, would not be good science and neither would it be good law. THIS IS NOT DEMOCRACY AT WORK TO DO THIS!

In the California Election Code Section 10015, this is not an "either", "or" type of sentence, but rather, this sentence has two parts which are joined together with the conjunction "and". Webster's New World Dictionary, Third College Edition (1988) defines "and" as ". . .used to join elements of equal grammatical value." This means that legally, in the quotation of the California

Election Code Section 10015 listed below, which the opposing side and the Appellate Judges as well emphasized, then both sides of the conjunction "and" must receive equal value and equal consideration. Section 10015 reads as follows:

> "[A] peremptory writ of mandate shall issue only upon proof that the error, omission or neglect is in violation of this code or the Constitution
>
> and
>
> that issuance of the writ will not substantially interfere with the conduct of the election." (Underlining added for emphasis.)

The first half, or the first 50% of this grammatical equation has been proven to have warranted a writ of mandate for Plaintiff's ballot placement in June, 1992. Also in reconsidering all of Plaintiff's arguments on the second 50% of the above grammatical equation, then it likewise should have warranted a writ of mandate for Plaintiff's ballot placement for June, 1992 in CA! But now since Plaintiff has been denied ballot placement and since her Constitutional Rights were ignored, then Plaintiff is now asking for the following two things:

1) Reparation should be granted in the amount of ten million dollars since Plaintiff has shown, legally, that she should have had her name on the CA Republican Presidential Primary Ballot! And,

2) Finally, the Court should also now grant in writing, ballot placement for Plaintiff for the next upcoming Presidential Primary Election in California!

You are all well aware, perhaps, that Plaintiff, Tennie Rogers is not a lawyer. However, she has been given a lot of wisdom by her Heavenly Father and she has also been well trained in scientific reasoning as well! Honorable Judges, what Plaintiff has presented in this paper is logically sound, factual, and truthful!

Thank you for your consideration of all of these important issues!

Respectfully submitted,

Tennie B. Rogers

By: TENNIE B. ROGERS, IN PRO PER
6710 South Quaker Avenue
Tulsa, OK 74136-3801
(918) 496-9047

Dated this 4th day of December, 1993.

APPENDIX INDEX

	Page
JUDICIAL DECISION; SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SACRAMENTO	A 1
JUDICIAL OPINIONS; IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA THIRD APPELLATE DISTRICT(Sacramento)	A 2
JUDICIAL DECISION ON REHEARING; IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA THIRD APPELLATE DISTRICT (Sacramento)	A 11
JUDICIAL DECISION ON REVIEW; IN THE SUPREME COURT OF THE STATE OF CALIFORNIA	A 12
REMITTITUR TO TRIAL COURT CLERK; BY THE COURT OF APPEAL OF THE STATE OF CALIFORNIA THIRD APPELLATE DISTRICT (Sacramento)	A 13
REQUEST BY PLAINTIFF FOR A STAY OF THE ENFORCEMENT OF THE THIRD APPELLATE COURT JUSTICES' JUDGMENT	A 14
REPLY BY THIRD APPELLATE COURT'S DEPUTY CLERK DENYING PLAINTIFF'S REQUEST FOR A STAY OF THE ENFORCEMENT OF THE THIRD APPELLATE COURT JUSTICES' JUDGMENT	A 16
PLAINTIFF'S REQUEST TO SUPREME COURT OF CALIFORNIA AS TO WHY HER REQUEST FOR A REHEARING WAS DENIED AND ALSO WHY HER REQUEST, THAT THIS CASE BE PUBLISHED IN THE OFFICIAL CALIFORNIA PUBLICATIONS, WAS NOT ADDRESSED? . .	A 17
REPLY BY THE SUPREME COURT OF CALIFORNIA THAT A REQUEST TO PUBLISH MUST BE MADE ONLY TO THE COURT THAT ISSUED THE OPINION	A 19a

APPENDIX INDEX

Page

PLAINTIFF'S REPEAT REQUEST, TO THE COURT OF APPEAL, THIRD APPELLATE DISTRICT OF THE STATE OF CALIFORNIA (Sacramento), TO PUBLISH NOT ONLY THE APPELLATE COURT JUSTICES' OPINIONS, BUT ALSO PLAINTIFF'S REBUTTALS, IN THE OFFICIAL CALIFORNIA PUBLICATIONS . . . . . A 20a

SINCE THIRD APPELLATE COURT RENDERED NO DECISION DURING THE APPROPRIATE TIME FRAME, REGARDING REQUEST FOR PUBLICATION OF OPINION, IT NO LONGER HAS JURISDICTION TO DO SO--BUT RECOMMENDS DENIAL . . . . . A 21a

JUDICIAL OPINION BY JUDGE GUALCO IN THE LA ROUCHE vs. EU CASE NO. 369837 . . . . . A 22

PETITIONER COLLECTED IN EXCESS OF THE MINIMUM OF 500 QUALIFIED ELECTORS' SIGNATURES FOR BALLOT PLACEMENT IN THE STATE OF MISSISSIPPI . . . . . A 27a

PETITIONER COLLECTED 543 QUALIFIED SIGNATURES FOR FULFILLMENT OF REQUIREMENT FOR ALABAMA'S BALLOT PLACEMENT . . . . . A 28

FEDERAL DECISIONS: TASHJIAN v. REPUBLICAN PARTY OF CONNECTICUT (1986) 479 U. S. 208-237 . . . . . A 29

UNITED STATES CONSTITUTION ARTICLE II, SECTION 1(5) . . . . . A 92a

UNITED STATES CONSTITUTIONAL BILL OF RIGHTS: AMENDMENT NO. 1 & NO. 14 . A 92b

CALIFORNIA CONSTITUTION: ARTICLE II, SECTION 5 . . . . . A 93

APPENDIX INDEX

Page

CALIFORNIA ELECTION CODE:

§ 1000(c) . . . . . A 94

§ 1002 . . . . . A 94

§ 1003 . . . . . A 95

§ 1202.1 . . . . . A 95

§ 6010 . . . . . A 97

§ 6013 . . . . . A 97

§ 6311 . . . . . A 98

§§ 10015 . . . . . A 99a

§§ 20021 . . . . . A 99b

CALIFORNIA PRESIDENTIAL CANDIDATE QUALIFICATION PROCEDURES, LISTING THE SECRETARY OF STATE'S SELECTION CRITERIA (ORIGINAL) . . . A 100

CALIFORNIA SECRETARY OF STATE'S NEWS RELEASE, JANUARY 31, 1992, ANNOUNCING HER CHOSEN PRESIDENTIAL CANDIDATES FOR JUNE PRIMARY ELECTION . . A 110

CALIFORNIA SECRETARY OF STATE'S MARCH 25, 1992 REVISED SELECTION CRITERIA FOR U. S. PRESIDENTIAL CANDIDATES . . . . . A 114

CALIFORNIA SECRETARY OF STATE'S PRELIMINARY LETTER, MAY 11, 1992, OF OPPOSITION, TO ISSUANCE OF ALTERNATIVE OR OTHER WRIT OF MANDATE BY THE CALIFORNIA SUPERIOR COURT, GIVING YET ANOTHER DIFFERENT SELECTION CRITERIA LIST A 117

APPENDIX INDEX

Page

PETITIONER'S REQUEST TO CALIFORNIA SECRETARY OF STATE FOR BALLOT PLACEMENT, December 22, 1991 . . . . A 127

PETITIONER'S REQUEST TO CALIFORNIA SECRETARY OF STATE FOR BALLOT PLACEMENT, January 6, 1992 . . . . . A 129

PETITIONER'S REQUEST TO CALIFORNIA SECRETARY OF STATE FOR BALLOT PLACEMENT, February 24, 1992 . . . . A 133

APPENDIX

-- COPY --

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

DATE/TIME: MAY 12, 1992 DEPT. NO.: 8

JUDGE: JAMES T. FORD CLERK: B. WILSON

REPORTER: NCR BALIFF:

TENNIE B. ROGERS, IVAN K. ROGERS, et al
PRO PER

VS #370371

MARCH FONG EU, et al A. MILLER

NATURE OF PROCEEDINGS:

PETITION FOR WRIT OF MANDATE

The above entitled matter came on for hearing on this date with the above named counsel and the petitioner in pro per present.

The matter was argued in chambers.

The petition for writ of mandate was DENIED.

BOOK: 8 CASE NO. : 370371

PAGE: 17 CASE TITLE: ROGERS V EU

DATE:. 5-12-92 DISTRIB:

SACRAMENTO SUPERIOR COURT

BY:_____Deputy Clerk

APPENDIX

--COPY-- NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CA

THIRD APPELLATE DISTRICT (Sacramento)

FILED Jul 23,1993 COURT OF APPEALS-THIRD DIST.

ROBERT L. LISTON, CLERK BY_____,Deputy

TENNIE B. ROGERS, Plaintiff and Appellant, v. MARCH FONG EU, as Secretary of State etc., Defendant and Respondent.	C013733 (Super.Ct.No. CV370371)

Tennie B. Rogers (plaintiff) appeals from an order denying her petition for writ of mandate. We shall afirm.

Elections Code section 6010 states: "The Secretary of State shall place the name of a candidate upon the Republican presidential primary ballot when the Secretary of State shall have determined that such a candidate is generally recognized throughout the United States or California as a candidate

for the nomination of the Republican Party for President of the United States."

"On or before February 1 immediately preceding a presidential primary election the Secretary of State shall publicly announce and distribute to the news media for publication a list of the candidates he intends to place on the ballot at the following presidential primary election. Following this announcement he may add candidates to his selection, but he may not delete any candidate whose name appears on the announced list."

Plaintiff's petition tendered the claim that she was entitled to have her name placed on the ballot for the June 1992 primary election as a Republican party candidate for President of the United States. The petition alleges plaintiff submitted a statement of candidacy to defendant March Fong Eu, the Secretary of State, in December 1991 and again early in January 1992. Exercising the discretion vested in her, defendant concluded

plaintiff's candidacy did not meet the criteria set forth in Elections Code section 6010. (Further statutory references to sections of an undesignated code are to the Elections Code.) Accordingly, defendant did not include plaintiff's name on the list defendant issued on January 31, 1992, of Republican Party candidates whose name would appear on the June 1992 primary ballot.

Plaintiff could have sought to have her name placed on the ballot by securing a sufficient number of signatures from those voters registered as affiliated with the Republican Party. (§ 6021.)[1*] Instead,

---

[1]Section 6013 states: "Any unselected candidate desiring to have his name placed on the presidential primary ballot shall have nomination papers circulated in his behalf. In order to qualify his name for placement on the presidential primary ballot, the candidate's nomination papers shall be signed by voters registered as affiliated with the Republican Party equal in number to not less than 1 percent of the number of persons registered as members of the Republican Party, as reflected in the report of registration issued by the Secretary of State in January of the year of the presidential primary election."

*(The original should have read § 6013.)

plaintiff persisted in her efforts to be placed on the ballot under the provisions of section 6010. From February through April 1992 plaintiff continued to send to defendant various items of correspondence designed to show plaintiff was entitled to be placed on the ballot because her candidacy was "generally recognized throughout the United States or California . . . ." (§ 6010.) Defendant remained unpersuaded and continuously rejected plaintiff's efforts to have her name appear on the ballot for the June primary election.

On May 8, 1992, plaintiff commenced the underlying proceeding pursuant to section 10015. Subdivisions (a) (1) and (2) of that section state in relevant part: "Any voter may seek a writ of mandate alleging that an error or omission has occurred or is about to occur in the placing of any name on, or in the printing of, a ballot, sample ballot, voter pamphlet or other official matter, or that any neglect of duty has occurred or is

about to occur. [¶] [A] peremptory writ of mandate shall issue only upon proof that the error, omission or neglect is in violation of this Code or the Constitution and that issuance of the writ will not substantially interfere with the conduct of the election."

Defendant resisted the petition on numerous grounds, including that it was impossible to place plaintiff's name on the ballot at such a late date without "substantially (interfering) with the conduct of the election." (§ 10015.) Defendant asserted "[t]ens of thousands" of absentee ballots had already been cast and returned as of the time plaintiff filed her petition for writ of mandate.

Following hearing and argument the superior court, without comment, denied the petition. Plaintiff appeals.

On appeal, plaintiff continues to claim defendant abused her discretion in refusing to place plaintiff's name on the ballot for

the June 1992 primary election. Unfortunately for plaintiff, her claim avails her nothing. First the issue is moot in light of the fact the primary election has long since passed. "[Section 10015] is designed to correct preelection ballot errors[.] . . . [¶] [P]ostelection relief is governed either by quo warranto proceedings . . . or by Elections Code section 20021. [Citation.]" (Fn. ommitted; Salazar v. City of Montevello(1987) 190 Cal.App.3d 953, 956-957.)[2]

Second, to the extent plaintiff believed she was "generally recognized throughout the United States or California as a candidate" for President, and that defendant abused her discretion in concluding otherwise, it was incumbent upon plaintiff to bring her petition for writ of mandate at the earliest possible date. Instead, plaintiff waited until after five million sample ballots had been printed, most of them had been mailed, and

---

[2]Section 20021 specifies the grounds for contest of an election.

tens of thousands of absentee ballots had been cast before seeking relief in the superior court.

Although the superior court's order is silent as to the basis for its denial of the petition for writ of mandate, it appears clear the court could not have granted plaintiff the relief afforded by section 10015. That is, a writ may issue only if it would not substantially interfere with the conduct of the election. (§ 10015, subd. (a) (2).) Given the belatedness of plaintiff's mandamus proceeding, the superior court could not have granted plaintiff the relief she sought without running afoul of section 10015. Accordingly, we find no error in the trial court's determination.[3]

---

[3]In the prayer of her petition plaintiff demands "reparation fees in the amount of two million dollars to make amends for the Secretary of State continuously denying the candidate, Tennie Rogers, her constitutional rights to have her name placed on the California Republican Presidential Primary Ballot" There is no other mention in the petition of "reparations" or damages nor is there any allegation of a substantive basis for such

Plaintiff also takes issue with the manner in which the hearing on the petition was conducted. She claims she was denied a fair trial by the superior court's refusal to allow her to testify fully and to cross-examine counsel representing defendant. However, there was no reporter present at the hearing and thus no transcript is available to review the merits of plaintiff's claims. In the absence of an adequate record, this court is in no position to review the manner in which the superior court conducted the hearing. (9 Wickin, Cal. Procedure (3d ed. 1985) Appeal. § 418, pp. 415-417.)

---

[3] (Cont'd.) relief. "[T]he prayer is no part of the statement of the cause of action." (Berg v. Investors Real Estate Loan Co. (1962) 207 Cal.App.2d 808, 815; Nemeth v. Trumbull (1963) 220 Cal.App.2d 788, 791.) We give plaintiff's demand for "reparations" no further consideration.

////
////
////
////
////
////

The judgment (order) is affirmed. The defendant shall recover costs.[4]

Puglia, P.J.

We concur:

Sparks, J.

Davis, J.

[4]Petitioner makes numerous references in her brief on appeal to LaRouche v. Eu (Super.Ct. Sacto. County, 1992, No. 369837). We construe such references as a request for judicial notice. In light of our determination herein, judicial notice is unnecessary and on that basis the request is denied.

APPENDIX

-- COPY --

IN THE COURT OF APPEAL OF THE STATE OF CA

THIRD APPELLATE DISTRICT (Sacramento)

FILED Aug 17,1993 COURT OF APPEALS-THIRD DIST.

ROBERT L. LISTON, CLERK BY_____,Deputy

TENNIE B. ROGERS,

Plaintiff and Appellant

vs. 3 Civil C013733

MARCH FONG EU, Sacramento CV370371

SECRETARY OF STATE

Defendant and Respondent

By the Court:

Appellant's petition for rehearing is denied.

Dated: August 17, 1993

PUGLIA, P. J.

- - - - - - - - - - - - - -

cc: See Mailing List

APPENDIX

-- COPY --

Third Appellate District No. C013733

SO34588

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

IN BANK

TENNIE B. ROGERS, Appellant

v.

MARCH FONG EU, Respondent

Appellant's petition for review DENIED.

LUCAS

Chief Justice

SUPREME COURT

FILED

SEP 29, 1993

Robert Wandruff Clerk

DEPUTY

APPENDIX

-- COPY --

IN THE COURT OF APPEAL OF THE STATE OF CA

IN AND FOR THE THIRD APPELLATE DIST.

TENNIE B. ROGERS

Plaintiff and Appellant

vs. 3 Civil C013733

MARCH FONG EU, Sacramento CV370371

SEC'T. OF STATE, Defendant and Respondent

REMITTITUR TO TRIAL COURT CLERK

I, ROBERT L. LISTON, Clerk of the Court of Appeal of the State of California for the Third Appellate District, do hereby certify that the attached is a true and correct copy of the original opinion entered in the above entitled cause that has now become final.

Defendant to recover costs on appeal.

WITNESS my hand and the seal of the Court affixed at my office this 6th day of October 1993.

SEAL

ROBERT L. LISTON, Clerk

By: S. LOREE Deputy

APPENDIX

--COPY--

TENNIE B. ROGERS
6710 South Quaker Avenue
Tulsa, OK 74136-3801
(918) 496-9047

October 20, 1993

COURT OF APPEAL, THIRD APPELLATE DISTRICT
Library and Courts Building
914 Capitol Mall, Room 100
Sacramento, CA 95814-4869

TO THE HONORABLE PRESIDING CHIEF JUSTICE,
P.J. PUGLIA, AND ASSOCIATE JUSTICES OF THE
THIRD APPELLATE COURT OF APPEALS:

RE: ROGERS v. EU
Case No. 3 Civil C013733
Sacramento CV370371

In lieu of the fact that Appellant is in the process of appealing this case to the U.S. Supreme Court in Washington, D. C., I, TENNIE B. ROGERS, Plaintiff and appellant, do hereby request your Third Appellate Court to stay the enforcement of your

judgment, which according to your clerk, has become final on the above case stating the following:

"Defendant to recover costs on appeal."

According to the clerk at the U. S. Supreme Court in Washington, D. C. Appellant has ninety days, from the date of the denial by the Judges of the California Supreme Court, in which to file her petition with them. A proof of service showing the mailing list of this document is enclosed.

Respectfully submitted,

TENNIE B. ROGERS

TENNIE B. ROGERS, APPELLANT

IN PRO PER

TBR

Enc.

APPENDIX

--COPY--

OFFICE OF THE CLERK, COURT OF APPEAL

THIRD APPELLATE DISTRICT, STATE OF CA

Library & Courts Bldg.,914 Capitol Mall,Rm.100

Sacramento, CA 95814-4869

October 22, 1993 (916) 654-0209

TENNIE B. ROGERS

6710 South Quaker Avenue

Tulsa, OK 74136 3801

Re: TENNIE B. ROGERS vs.

MARCH FONG EU, SECRETARY OF STATE

3 Civil C013733,(Sacro.CO.No.CV370371)

Dear Ms. Rogers:

Your letter dated October 20, 1993, is being returned to you unfiled. Pursuant to rule 25 of the California Rules of Court the remittitur issued in the above matter on October 6, 1993, and no further filings can be accepted.

Very truly yours,

ROBERT L. LISTON, CLERK

By: Sandy Loree, Deputy Clerk

Enc.

APPENDIX

--COPY--

TENNIE B. ROGERS

6710 South Quaker Avenue

Tulsa, OK 74136-3801

(918) 496-9047

October 9, 1993

SUPREME COURT OF CALIFORNIA

303 Second St., South Tower, Eighth Floor

San Francisco, CA 94107

TO THE HONORABLE PRESIDING CHIEF JUSTICE, MALCOLM LUCAS, AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA

RE: ROGERS v. EU

Case No. 3 Civil C013733

Sacramento CV370371

This is a request by Appellant, Tennie B. Rogers, for the following two things:

1) Since Appellant's petition for review was DENIED on September 29, 1993, Appellant feels she has a right to know WHY her petition for review was DENIED. THERE WERE SEVERAL QUESTIONS OF LAW THROUGHOUT

APPELLANT'S BRIEF WHICH DESERVED TO BE ADDRESSED AND ANSWERED.

2) Secondly, the issue of Appellant's petition requesting that this case be published in the OFFICIAL CALIFORNIA PUBLICATIONS, which request was listed on the front cover of her brief, as well as in the brief itself, was not addressed. APPELLANT HAS A RIGHT TO REQUEST THAT NOT ONLY THE JUDGES' OPINION, BUT ALSO HER REBUTTALS TO THE SAME, ALL BE PUBLISHED SINCE THE SUBJECT OF THIS CASE IS OF ONGOING CONCERN AND INTEREST TO THE PUBLIC.

A proof of service showing the mailing list of this document is enclosed.

Respectfully submitted,

TENNIE B. ROGERS

TENNIE B. ROGERS, APPELLANT

IN PRO PER

TBR

Enc.

APPENDIX

-- COPY --

SUPREME COURT OF CALIFORNIA

303 Second St., South Tower, Eighth Floor

San Francisco, CA 94107

October 12, 1993 (415) 396-9400

Tennie B. Rogers

6710 South Quaker Avenue

Tulsa, OK 74136-3801

RE: S034588 - Rogers v. Eu

Dear Ms. Rogers,

Returned unfiled is your letter of October 9, 1993. The court does not state a reason for the denial pettitions brought before it. Please rest assured, however, that your petition and the contentions made therein were considered by the entire court and that the denial expresses the decision of the court on this matter.

The Court is also not able to consider your request to publish the court of appeal opinion. Pursuant to Rule 978(a) of the

California Rules of Court, such request must be made only to the court that issued the opinion.

Very truly yours,

ROBERT F. WANDRUFF

COURT ADMINISTRATOR AND

CLERK OF THE SUPREME COURT

John C. Rossi

Assistant Clerk-Administrator

Encl.

APPENDIX

--COPY--

(DUPLICATE
1 Extra Copy
Sent
10-27-93

TENNIE B. ROGERS

6710 South Quaker Avenue

Tulsa, OK 74136-3801

(918) 496-9047

October 16, 1993

COURT OF APPEAL, THIRD APPELLATE DISTRICT

Library & Courts Bldg.,914 Capitol Mall,Rm.100

Sacramento, CA 95814-4869

TO THE HONORABLE PRESIDING CHIEF JUSTICE,

P.J. PUGLIA AND ASSOCIATE JUSTICES OF THE

THIRD APPELLATE COURT OF SACRAMENTO CO.,CA

RE: ROGERS v. EU

Case No. 3 Civil C013733

Sacramento CV370371

This is a repeat REQUEST by Appellant, Tennie B. Rogers, for the following:

This is a repeat REQUEST that this case be published in the OFFICIAL CALIFORNIA PUBLICATIONS, listing not only the Judges' opinion, but also Appellant's

rebuttals as well. (Appellant's first request for the above, along with Appellant's rebuttals to the Judges' opinion, was presented to this court on August 7, 1993, along with Appellant's Petition for a rehearing in this court. On August 17, 1993 this court sent Appellant a notice that her request for rehearing was denied, but not one word was said regarding Appellant's REQUEST FOR THE JUSTICES opinion plus Appellant's rebuttals be published in the OFFICIAL CALIFORNIA PUBLICATIONS. Appellant understands that she has a constitutional right to request that this all be published since THE SUBJECT OF THIS CASE IS OF ONGOING CONCERN AND INTEREST TO THE PUBLIC.

A proof of service showing the mailing list of this document is enclosed.

Respectfully submitted,

TBR

Enc.

TENNIE B. ROGERS, APPELLANT
IN PRO PER

APPENDIX

-- COPY --

OFFICE OF THE CLERK, COURT OF APPEAL
THIRD APPELLATE DIST., STATE OF CALIFORNIA
Library & Courts Bldg.,914 Capitol Mall,Rm.100
Sacramento, CA 95814-4869
(916) 654-0209

November 4, 1993

Mr. Robert Wandruff
Clerk-Administrator of the
California Supreme Court
303 Second St., South Tower, Eighth Floor
San Francisco, CA 94107

Re: TENNIE B. ROGERS vs.
MARCH FONG EU, SECRETARY OF STATE
3 Civil C013733
Sacramento County No. CV370371

Dear Mr. Wandruff:

Appellant Tennie Rogers has requested that the opinion in the above captioned case be published. Said request was contained in appellant's petition for rehearing filed with

this court on August 9, 1993. The petition for rehearing was denied on August 17, 1993. The court did not rule on the request to publish at that time and no longer has jurisdiction to do so. The members of the court who participated in the decision have reviewed the request and recommend that publication be denied for the following reasons:

1. The opinion does not establish a new rule of law nor alter nor modify an existing rule of law.

2. The opinion does not criticize an existing rule of law nor interpret it.

3. The opinion merely applies existing, clear, and unambiguous law to a singular and particular set of facts.

In accordance with Rule 978(a) of the California Rules of Court, enclosed are a copy of the opinion and the request for publication.

Very truly yours,

ROBERT L. LISTON, Clerk

By: Sandy Loree, Deputy Clerk

--COPY--

FILED: Mar 24, 1992

By: L. Mongado

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

In re the Matter of:

No. 369837

Dept. 29

LYNDON H. LAROUCHE, JR., JAMES DUREE, CALIFORNIA STEERING COMMITTEE OF DEMOCRATS FOR ECONOMIC RECOVERY, LAROUCHE IN '92

vs.

Petitioners,

MARCH FONG EU, SECRETARY OF STATE OF THE STATE OF CALIFORNIA, Respondent.

ORDER ON PETITION FOR WRIT OF MANDATE

Petitioners filed a writ of mandate pursuant to Elections Code section 10015 and Code of Civil Procedure section 1085 requesting that respondent be directed to place the name of petitioner Lyndon H. LaRouche, Jr. on the California Democratic Presidential Preference Primary Ballot for the June 2, 1992 primary.

Under article II, section 5 of the California Constitution:

> "The Legislature shall provide for primary elections for partisan offices, including an open presidential primary whereby the candidates on the ballot are those found by the Secretary of State to be recognized candidates throughout the nation or throughout California for the office of President of the United States, and those whose names are placed on the ballot by petition, but excluding any candidate who has withdrawn by filing an affidavit of noncandidacy." (Emphasis added.)

Election Code section 6311 which implements article II, section 5, provides in pertinent part:

> "The Secretary of State shall place the name of *** a candidate upon *** the presidential primary ballot when he or she has determined that such a candidate is generally advocated for or recognized throughout the United States or California as actively seeking the nomination of the Democratic Party for President of the United States. The Secretary of State shall include as criteria for selecting candidates the fact of qualifying for funding under the

Federal Elections Campaign Act
as amended in 1974."

Respondent has construed the second sentence of section 6311 as constituting a threshold requirement for placement on the primary ballot and has excluded all candidates, including petitioner LaRouche, who did not qualify for funding under the Federal Elections Campaign Act.

The Court finds that respondent's mechanical application of this criteria is inconsistent with Elections Code section 6311 and article II, section 5 of the California Constitution.

Elections Code section 6311 does not state that qualification for federal funds is a threshold requirement for placement on the primary ballot.[1/] It is simply one of

1/ Application for federal funds is entirely voluntary. It is entirely possible that an acknowledged front runner could simply choose not to seek federal funds. This choice should not have the further effect of preventing such a candidate from being placed on the primary ballot.

several criteria to be examined by the Secretary of State in determining whether a candidate is "generally advocated for or recognized throughout the United States or California as actively seeking the nomination of the Democratic Party for President of the United States." (Elec. Code, § 6311.)

In making such a determination, there are a host of other factors which should be considered, in addition to qualification for federal funding. These factors include whether the candidate has appeared on ballots in other states, whether the candidate has a significant level of support in California or the United States as a whole, and whether the candidate has appeared on the California ballot previously.

Applying these criteria in the present case, the Court finds that, notwithstanding his failure to qualify for federal funding, petitioner LaRouche is a "generally advocated

for or recognized" candidate for the Democratic Party's Presidential nomination. Petitioner LaRouche has appeared on the primary ballots of some 23 other states this year, he has appeared on the Democratic Party's ballot in California in two previous elections, and he has garnered more votes in two earlier primaries this year than two candidates who qualified for federal funds.

For the foregoing reasons:

IT IS HEREBY ORDERED that petitioners' writ of mandate is granted and that respondent is directed to place the name of Lyndon LaRouche, Jr. on the Democratic Presidential Preference Primary Ballot for the June 2,1992 California primary.

DATED: Mar 24, 1992.

EUGENE T. GUALCO

JUDGE OF THE SUPERIOR COURT
EUGENE T. GUALCO

jr/c:/tea/369837

APPENDIX

-- COPY --

THE MISSISSIPPI REPUBLICAN PARTY

Christopher W. Webster, Executive Director

Billy R. Powell, Chairman

June 3, 1993

Mrs. Tinney Rogers

421 North Baldwin Ave.

Sierra Madre, CA 91204

Dear Mrs. Rogers:

Per our telephone conversation today, I have searched our files in this office for the petition which you presented in support of your candidacy for president in 1992. I have been unable to find the petition and I suspect that they have been sent to our storage warehouse.

However I can state that you did present the Mississippi Republican Party with a petition desiring to have your name placed on the presidential preference primary. I can also state that your petition conformed to Sec-

tion 23-15-1093, Mississippi Code Annotated, 1972, and that the petition contained well in excess of the minimum of 500 qualified electors of the state of Mississippi.

I regret that I am unable to give you an exact count signatures. I hope this information will suffice to fulfill your request.

Dandin Reynolds, Jr.

My Commission Expires Oct.17, 1995

P.O. Box 60/Jackson, Mississippi 39205-0060/ (601) 948-5191/Fax (601) 354-0972

APPENDIX

-- COPY --

ALABAMA REPUBLICAN PARTY

2940 Clairmont Avenue, Birmingham, AL 35205

Mrs. Tennie Rogers

421 North Baldwin Ave.

Sierra Madre, CA 91024

May 26, 1993

Dear Mrs. Rogers:

This letter is to respond to your telephone inquiry of today regarding the number of signatures submitted by you last year for the purpose of gaining ballot access as a candidate for President in the 1992 Alabama Republican Party Presidential Preference Primary Elections.

The total number of signatures submitted by you was 544. One of the petitioners indicates residence as "New Orleans" and was, therefore, not considered a qualified petitioner. The total signatures considered for fulfillment of Alabama statute for ballot access was 543.

Best wishes, Joe Ellis

P.O. Box 320800, Birmingham, AL 35232

APPENDIX

Tashjian v. Republican Party of Connecticut (1986) 479 U. S. 208 - 237.

-- COPY --

OCTOBER TERM, 1986

TASHJIAN, SECRETARY OF STATE OF CONNECTICUT

v.

REPUBLICAN PARTY OF CONNECTICUT ET AL.

APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 85-766. Argued October 8, 1986--Decided December 10, 1986

A Connecticut statute (§ 9-431), enacted in 1955, requires voters in any political party primary to be registered members of that party. In 1984, appellee Republican Party of Connecticut (Party) adopted a Party rule that permits independent voters--registered voters not affiliated with any party--to

vote in Republican primaries for federal and statewide offices. The Party and the Party's federal officeholders and state chairman (also appellees) brought an action in Federal District Court challenging the constitutionality of § 9-431 on the ground that it deprives the Party of its right under the First and Fourteenth Amendments to enter into political association with individuals of its own choosing, and seeking declaratory and injunctive relief. The District Court granted summary judgment in appellees' favor, and the Court of Appeals affirmed.

Held:

1. Section 9-431 impermissibly burdens the rights of the Party and its members protected by the First and Fourteenth Amendments. Pp. 213-225.

(a) The freedom of association protected by those Amendments includes partisan political organization. Section 9-431 places limits upon the group of registered voters

whom the Party may invite to participate in the "basic function" of selecting the Party's candidates. The State thus limits the Party's assocional opportunities at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community. The fact that the State has the power to regulate the time, place, and manner of elections does not justify without more, the abridgment of fundamental rights, such as the right to vote or, as here, the freedom of political association. Pp. 213-217.

(b) The interests asserted by appellant Secretary of State of Connecticut as justification for the statute--that it ensures the administrability of the primary, prevents voter raiding, avoids voter confusion, and protects the integrity of the two-party system and the responsibility of party government--are insubstantial. The possibility of increases in the cost of administering the election system is not a suffi-

cient basis for infringing appellees First Amendment rights. The interest in curtailing raiding is not implicated since § 9-431 does not impede a raid on the Republican Party by independent voters: independent raiders need only register as Republicans and vote in the primary. The interest in preventing voter confusion does not make it necessary to burden the Party's associational rights. And even if the State were correct in arguing that § 9-431 in providing for a closed primary system is designed to save the Party from undertaking conduct destructive of its own interests, the State may not constitutionally substitute its judgment for that of the Party, whose determination of the boundaries of its own association and of the structure that best allows it to pursue its political goals is protected by the Constitution. Pp. 217-225.

2. The implementation of the Party rule

will not violate the Qualifications Clause of the Constitution--which provides that the House of Representatives "shall be composed of Members chosen . . . by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature"--and the parallel provision of the Seventeenth Amendment, because it does not disenfranchise any voter in a federal election who was qualified to vote in a primary or general election for the more numerous house of the state legislature. The Clause and the Amendment are not violated by the fact that the Party rule establishes qualifications for voting in congressional elections that differ from the qualifications in elections for the State legislature. Where state law, as here, has made the primary an integral part of the election procedure, the requirements of the Clause

and the Amendment apply to primaries as well as to general elections. The achievement of the goal of the Clause to prevent the mischief that would arise if state voters found themselves disqualified from participating in federal elections does not require that qualifications for exercise of the federal franchise be precisely equivalent to the qualifications for exercising the franchise in a given State. Pp. 225-229.

770 F. 2d 265, affirmed.

MARSHALL, J., delivered the opinion of the Court, in which BRENNAN, WHITE, BLACKMUN, and POWELL, JJ., joined, STEVENS, J., filed a dissenting opinion, in which SCALIA, J., joined, post, p. 230. SCALIA, J., filed a dissenting opinion, in which REHNQUIST, C.J., and O'CONNOR, J., joined, post., p. 234.

Elliot F. Gerson, Special Assistant Attorney General of Connecticut, argued the cause for appellant. With him on the briefs were Joseph I. Lieberman, Attorney General, and

Barney Lapp, Daniel R. Schaefer, and Henry S. Cohn, Assistant Attorneys General.

David S. Golub argued the cause and filed a brief for appellees.*

---

*Briefs of amici curiae urging reversal were filed for the State of New York et al. by Robert Abrams, Attorney General of New York, Robert Hermann, Solicitor General, Patrick Barnett-Mulligan, Lisa Margaret Smith, and Betsy Broder, Assistant Attorneys General, Charles A. Graddick, Attorney General of Alabama, Robert K. Corbin, Attorney General of Arizona, and Anthony B. Ching, Solicitor General, Charles M. Oberly, III, Attorney General of Delaware, Jim Smith, Attorney General of Florida, Neil F. Hartigan, Attorney General of Illinois, and Roma J. Stewart, Solicitor General, William J. Guste, Jr., Attorney General of Louisiana, James E. Tierney, Attorney General of Maine, and Cabanne Howard, Deputy Attorney General, Brian McKay, Attorney General of Nevada, Lacy H. Thornburg, Attorney General of North Carolina, Nicholas J. Spaeth, Attorney General of North Dakota, Anthony J. Celebrezze, Jr., Attorney General of Ohio, Michael Turpen Attorney General of Oklahoma, LeRoy S. Zimmerman, Attorney General of Pennsylvania, W. J. Michael Cody, Attorney General of Tennessee and A. G. McClintock, Attorney General of Wyoming, and for William J. Cibes, Jr., et el. by Timothy D. Bates.

Stephen E. Gottlieb filed a brief for James MacGregor Burns et al, as amici curiae urging affirmance.

JUSTICE MARSHALL delivered the opinion of the Court.

Appellee Republican Party of the State of Connecticut (Party) in 1984 adopted a Party rule which permits independent voters--registered voters not affiliated with any political party--to vote in Republican primaries for federal and statewide offices. Appellant Julia Tashjian, the Secretary of the State of Connecticut, is charged with the administration of the State's election statutes, which include a provision requiring voters in any party primary to be registered members of that party. Conn. Gen. Stat. § 9-431(1985).[1] Appellees, who in addition to the Party in-

---

Bruce A. Morrison, pro se, filed a brief for Senator Christopher J. Dodd et al. as amici curiae.

[1]The statute provides in pertinent part: "No person shall be permitted to vote at a primary of a party unless he is on the last-completed enrollment list of such party in the municipality or voting district . . ."

clude the Party's federal officeholders and the Party's state chairman, challenged this eligibility provision on the ground that it deprives the Party of its First Amendment right to enter into political association with individuals of its own choosing. The District Court granted summary judgment in favor of appellees. 599 F. Supp. 1228 (Conn. 1984). The Court of Appeals affirmed. 770 F. 2d 265 (CA2 1985). We noted probable jurisdiction, 474 U. S. 1049 (1986), and now affirm.

I

In 1955, Connecticut adopted its present primary election system. For major parties,[2] the process of candidate selection for fed-

---

[2]A "major party" is defined as a "a political party or organization whose candidate for governor at the last-preceding election for governor received . . . at least twenty per cent of the whole number of votes cast for all candidates for governor." Conn. Gen. Stat. § 9-372 (5) (B) (1985). The Democratic and Republican parties are the only major parties in the State under this definition.

eral and statewide offices requires a statewide convention of party delegates; district conventions are held to select candidates for seats in the state legislature. The party convention may certify as the party-endorsed candidate any person receiving more than 20% of the votes cast in a roll-call vote at the convention. Any candidate not endorsed by the party who received 20% of the vote may challenge the party-endorsed candidate in a primary election, in which the candidate receiving the plurality of votes becomes the party's nominee. Conn. Gen. Stat. §§ 9-382, 9-400, 9-444 (1985). Candidates selected by the major parties, whether through convention or primary, are automatically accorded a place on the ballot at the general election. § 9-379. The costs of primary elections are paid out of public funds. See, e.g., § 9-441.

The statute challenged in these proceedings, § 9-431, has remained substantially un-

changed since the adoption of the State's primary system. In 1976, the statute's constitutionality was upheld by a three-judge District Court against a challenge by an independent voter who sought a declaration of his right to vote in the Republican primary. Nader v. Schaffer, 417 F. Supp. 837 (Conn.), summarily aff'd, 429 U. S. 989 (1976). In that action, the Party opposed the plaintiff's efforts to participate in the Party primary.

Subsequent to the decision in Nader, however, the Party changed its views with respect to participation by independent voters in Party primaries. Motivated in part by the demographic importance of independent voters in Connecticut politics,[3] in September 1983 the Party's Central Committee recommended calling a state convention to consider

---

[3]The record shows that in October 1983 there were 659,268 registered Democrats, 425,695 registered Republicans, and 532,723 registered and unaffiliated voters in Connecticut. 2 App. to Juris. Statement 244.

altering the Party's rules to allow independents to vote in Party primaries. In January 1984 the state convention adopted the Party rule now at issue, which provides:

> "Any elector enrolled as a member of the Republican Party and any elector not enrolled as a member of a party shall be eligible to vote in primaries for nomination of candidates for the offices of United States Senator, United States Representative, Governor, Lieutenant Governor, Secretary of the State, Attorney General, Comptroller and Treasurer." App. 20.

During the 1984 session, the Republican leadership in the state legislature, in response to the conflict between the newly enacted Party rule and § 9-431, proposed to amend the statute to allow independents to vote in primaries when permitted by Party rules. The proposed legislation was defeated, substantially along party lines, in both houses of the legislature, which at that time were controlled by the Democratic Party.[4]

---

[4]In the November 1984 elections, the Republicans acquired a majority of seats in both houses of the state legislature, and an

The Party and the individual appellees then commenced this action in the District Court, seeking a declaration that § 9-431 infringes appellees' right to freedom of association for the advancement of common political objectives guaranteed by the First and Fourteenth Amendments, and injunctive relief against its further enforcement. After discovery, the parties submitted extensive stipulations of fact to the District Court, which granted summary judgment for appellees. The District Court concluded that "[a]ny effort by the state to substitute its judgment for that of the party on . . . the question of who is and is not sufficiently allied in interest with the party to warrant inclusion in its candidate selection process . . . substantially impinges on First Amendment rights." 599 F. Supp., at 1238. Rejecting the state interests proffered by appellant to justify

---

amendment to § 9-431 was passed, but was vetoed by the Democratic Governor.

the statute, the District Court held that "as applied to the Republican Party rule permitting unaffiliated voters to participate in certain Republican Party primaries, the statute abridges the right of association guaranteed by the First Amendment." Id., at 1241.

The Court of Appeals affirmed, holding that § 9-431 "substantially interferes with the Republican Party's first amendment right to define its associational boundaries, determine the content of its message, and engage in effective political association." 770 F. 2d. at 283.

II

We begin from the recognition that "[c]onstitutional challenges to specific provisions of a State's election laws . . . cannot be resolved by any 'litmus-paper test' that will separate valid from invalid restrictions." Anderson v. Celebrezze, 460 U. S. 780, 789

(1983) (quoting Storer v. Brown, 415 U. S. 724, 730 (1974), "Instead, a court . . . must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as Justification for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights." 460 U. S., at 789.

The nature of appellees' First Amendment interest is evident. "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideals is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech."

NAACP v. Alabama ex rel. Patterson, 357 U. S. 449, 460 (1958); see NAACP v. Button, 371 U. S. 415, 430 (1963); Bates v. Little Rock, 361 U. S. 516, 522-523 (1960). The freedom of association protected by the First and Fourteenth Amendments includes partisan political organization. Elrod v. Burns, 427 U. S. 347, 357 (1976) (plurality opinion); Buckley v. Valeo, 424 U. S. 1, 15 (1976). "The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom." Kusper v. Pontikes, 414 U. S. 51, 57 (1973).

The Party here contends that § 9-431 impermissibly burdens the right of its members to determine for themselves with whom they will associate, and whose support they will seek, in their quest for political success. The Party's attempt to broaden the base of public participation in and support for its activities is conduct undeniably central to the exercise of the right of association. As we

have said, the freedom to join together in furtherance of common political beliefs "necessarily presupposes the freedom to identify the people who constitute the association." Democratic Party of United States v. Wisconsin ex. rel. La Follette, 450 U. S. 107, 122 (1981).

A major state political party necessarily includes individuals playing a broad spectrum of roles in the organization's activities. Some of the Party's members devote substantial portions of their lives to furthering its political and organizational goals, others provide substantial financial support, while still others limit their participation to casting their votes for some or all of the Party's candidates. Considered from the standpoint of the Party itself, the act of formal enrollment or public affiliation with the Party is merely one element in the continuum of participation in Party affairs, and need not be in any sense the most impor-

tant.[5]

Were the State to restrict by statute financial support of the Party's candidates to Party members, or to provide that only Party members might be selected as the Party's chosen nominees for public office, such a prohibition of potential association with non-members would clearly infringe upon the rights of the Party's members under the First Amendment to organize with like-minded citizens in support of common political goals. As we have said, "'[a]ny interference with the freedom of a party is simultaneously an interference with the freedom of its adherents.'" Democratic Party, supra, at 122 (quoting Sweezy v. New Hampshire, 354 U. S..

---

[5]Indeed, acts of public affiliation may subject the members of political organizations to public hostility or discrimination, under those circumstances an association has a constitutional right to protect the privacy of its membership rolls, Bates, v. Little Rock, 361 U. S. 516, 523-524 (1960); NAACP v. Alabama ex rel. Patterson, 357 U. S. 449, 462 (1958).

234, 250 (1957).[6] The statute here places limits upon the group of registered voters whom the Party may invite to participate in the "basic function" of selecting the Party's

---

[6]It is this element of potential interference with the rights of the Party's members which distinguishes the present case from others in which we have considered claims by nonmembers of a party seeking to vote in that party's primary despite the party's opposition. In this latter class of cases, the nonmember's desire to participate in the party's affairs is overborne by the countervailing and legitimate right of the party to determine its own membership qualifications. See Rosario v. Rockefeller, 410 U. S. 752 (1973); Nader v. Schaeffer, 417 F. Supp. 837 (Conn.), summarily aff'd. 429 U.S. 989 (1976). Similarly, the Court has upheld the right of national political parties to refuse to seat at their conventions delegates chosen in state selection processes which did not conform to party rules. See Democratic Party of United States v. Wisconsin ex rel. La Follette, 450 U. S. 107 (1981); Cousins v. Wigoda, 419 U. S. 477 (1975). These situations are analytically distinct from the present case, in which the Party and its members seek to provide enhanced opportunities for participation by willing nonmembers. Under these circumstances, there is no conflict between the associational interests of members and nonmembers. See generally Note, Primary Elections and the Collective Right of Freedom of Association, 94 Yale L. J. 117 (1984).

candidates. Kusper v. Pointikes, supra, at 58. The State thus limits the Party's associational opportunities at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community.[7]

---

[7]Appellant contends that any infringement of the associational rights of the Party or its members is de minimus, because Connecticut law, as amended during the pendency of this litigation, provides that any previously unaffiliated voter may become eligible to vote in the Party's primary by enrolling as a Party member as late as noon on the last business day preceding the primary. Conn. Gen. Stat. § 9-56 (1985). Thus, appellant contends, any independent voter wishing to participate in any Party primary may do so.

This is not a satisfactory response to the Party's contentions for two reasons. First, as the Court of Appeals noted, the Formal affiliation process is one which individual voters may employ in order to associate with the Party, but it provides no means by which members of the Party may choose to broaden opportunities for joining the association by their own act, without any intervening action by potential voters. 770 F. 2d at 281, n. 24. Second, and more importantly, the requirement of public affiliation with the Party in order to vote in the primary conditions the exercise of the associational right upon the making of a public statement of adherence to the Party which the State requires regardless

It is, of course, fundamental to appellant's defense of the State's statute that this impringement upon the associational rights of the Party and its members occurs at the ballot box, for the Constitution grants to the States a broad power to prescribe the "Times, Places and Manner of holding Elections for Senators and Representatives." Art. I, § 4, cl. 1, which power is matched by state control over the election process for state offices. But this authority does not extinguish the State's responsibility to observe the limits established by the First Amendment rights of the State's citizens.

---

of the actual beliefs of the individual voter. Cf. Wooley v. Maynard, 430 U. S. 705, 714-715 (1977); West Virginia Board of Education v. Barnette, 319 U. S. 624, 633-634 (1943). As counsel for appellees conceeded at oral argument, a requirement that independent voters merely notify state authorities of their intention to vote in the Party primary would be acceptable as an administrative measure, but "[t]he problem is that the State is insisting on a public act of affiliation . . . joining the Republican Party as a condition of this association." Tr. of Oral. Arg. 40.

The power to regulate the time, place, and manner of elections does not justify, without more, the abridgment of fundamental rights, such as the right to vote, see Wesberry v. Sanders, 376 U. S. 1, 6-7 (1964), or, as here, the freedom of political association. We turn then to an examination of the interests which appellant asserts to justify the burden cast by the statute upon the associational rights of the Party and its members.

III

Appellant contends that § 9-431 is a narrowly tailored regulation which advances the State's compelling interests by ensuring the administrability of the primary system, preventing raiding, avoiding voter confusion, and protecting the responsibility of party government.

A

Although it was not presented to the Court of Appeals as a basis for the defense of the statute, appellant argues here that the ad-

ministrative burden imposed by the Party rule is a sufficient ground on which to uphold the constitutionality of § 9-431.[8] Appellant contends that the Party's rule would require the purchase of additional voting machines, the training of additional poll workers, and potentially the printing of additional ballot materials specifically intended for independents voting in the Republican primary. In essence, appellant claims that the administration of the system contemplated by the Party rule would simply cost the State too much.

---

[8]The District Court entered no findings of fact as to the potential administrative changes necessary to implement the Party rule. As appellant conceded at oral argument, the only evidence in the record before the District Court relating to the administration of the rule was a statement by the State's election attorney in testimony before the legislature that the system would be "workable." Id., at 20. Appellant relies here upon affidavits concerning potential administrative burden which were submitted to the Court of Appeals in support of appellant's request for a stay, entered after this Court noted probable jurisdiction.

Even assuming the factual accuracy of these contentions, which have not been subjected to any scrutiny by the District Court, the possibility of future increases in the cost of administering the election system is not a sufficient basis here for infringing appellees' First Amendment rights. Costs of administration would likewise increase if a third major party should come into existence in Connecticut, thus requiring the State to fund a third major party primary. Additional voting machines, poll workers, and ballot materials would all be necessary under these circumstances as well. But the State could not forever protect the two existing major parties from competition solely on the ground that two major parties are all the public can afford. Cf. Anderson v. Celebrezze, 460 U.S. 780 (1983); Williams v. Rhodes, 393 U. S. 23 (1968). While the State is of course entitled to take administrative and financial

considerations into account in choosing whether or not to have a primary system at all, it can no more restrain the Republican Party's freedom of association for reasons of its own administrative convenience than it could on the same ground limit the ballot access of a new major party.

B

Appellant argues that § 9-431 is justified as a measure to prevent raiding, a practice "whereby voters in sympathy with one party designate themselves as voters of another party so as to influence or determine the results of the other party's primary." Rosario v. Rockefeller, 410 U. S. 752, 760 (1973). While we have recognized that "a State may have a legitimate interest in seeking to curtail 'raiding,' since that practice may affect the integrity of the electoral process," Kusper v. Pontikes, 414 U. S., at 59-60; Rosario v. Rockefeller, supra, at 761,

that interest is not implicated here.[9] The statute as applied to the Party's rule prevents independents, who otherwise cannot vote in any primary, from participating in the Republican primary. Yet a raid on the Republican Party primary by independent voters, a curious concept only distantly related to the type of raiding discussed in Kusper and Rosario, is not impeded by § 9-431; the independent raiders need only register as Republicans and vote in the primary. Indeed, under Conn. Gen. Stat. § 9-56 (1985), which permits an independent to affiliate with the

---

[9]As we have previously noted, a study commission established by the national Democratic Party concluded that "the existence of 'raiding' has never been conclusively proven by survey research." Democratic Party of United States v. Wisconsin ex rel. La Follette 450 U. S. at 122-123, n. 23 (quoting Openness, Participation and Party Building; Reforms for a Stronger Democratic Party 68(Feb.17, 1978)). In view of our conclusion the § 9-431 is irrelevant to the question of raiding, we express no opinion as to whether the continuing difficulty of proving that raiding is possible attenuates the asserted state interest in preventing the practice.

Party as late as noon on the business day preceding the primary, see n. 7, supra, the State's election statutes actually assist a "raid" by independents, which could be organized and implemented at the 11th hour. The State's asserted interest in the prevention of raiding provides no justification for the statute challenged here.

C

Appellant's next argument in support of § 9-431 is that the closed primary system avoids voter confusion. Appellant contends that "[t]he legislature could properly find that it would be difficult for the general public to understand what a candidate stood for who was nominated in part by an unknown amorphous body outside the party, while nevertheless using the party name." Brief for Appellant 59. Appellees respond that the State is attempting to act as the ideological guarantor of the Republican Party's

candidates, ensuring that voters are not misled by a "Republican" candidate who professes something other than what the State regards as true Republican principles. Brief for Appellees 28.

As we have said, "[t]here can be no question about the legitimacy of the State's interest in fostering informed and educated expressions of the popular will in a general election." Anderson v. Celebrezze, 460 U. S. at 796. To the extent that party labels provide a shorthand designation of the views of party candidates on matters of public concern, the identification of candidates with particular parties plays a role in the process by which voters inform themselves for the exercise of the franchise. Appellant's argument depends upon the belief that voters can be "mislead" by party labels. But "[o]ur cases reflect a greater faith in the ability of individual voters to inform themselves about campaign issues." Id., at 797. More-

over, appellant's concern that candidates selected under the Party rule will be the nominees of an "amorphous" group using the Party's name is inconsistent with the facts. The Party is not proposing that independents be allowed to choose the Party's nominee without Party participation; on the contrary, to be listed on the Party's primary ballot continues to require, under a statute not challenged here, that the primary candidate have obtained at least 20% of the vote at a Party convention, which only Party members may attend. Conn. Gen. Stat. §§ 9-400 (1985). If no such candidate seeks to challenge the convention's nominee in a primary, then no primary is held, and the convention nominee becomes the Party's nominee in the general election without any intervention by independent voters.[10] Even assuming, however, that

[10]The record does not disclose the proportion of Connecticut Republican Party nominations that are the result of primary contests.

putative candidates defeated at the Party convention will have an increased incentive under the Party's rule to make primary challenges, hoping to attract more substantial support from independents than from Party delegates, the requirement that such challengers garner substantial minority support at the convention greatly attenuates the State's concern that the ultimate nominee will be wedded to the Party in nothing more than a marriage of convenience.

In arguing that the Party rule interferes with educated decisions by voters, appellant also disregards the substantial benefit which the Party rule provides to the Party and its members in seeking to choose successful candidates. Given the numerical strength of independent voters in the State, one of the questions most likely to occur to Connecticut Republicans in selecting candidates for public office is how can the Party most effec-

tively appeal to the independent voter? By inviting independents to assist in the choice at the polls between primary candidates selected at the Party convention, the Party rule is intended to produce the candidate and platform most likely to achieve that goal. The state statute is said to decrease voter confusion, yet it deprives the Party and its members of the opportunity to inform themselves as to the level of support for the Party's candidates among a critical group of electors. "A State's claim that it is enhancing the ability of its citizenry to make wise decisions by restricting the flow of information to them must be viewed with some skepticism." Anderson v. Celebrezze, supra, at 798. The State's legitimate interests in preventing voter confusion and providing for educated and responsible voter decisions in no respect "make it necessary to burden the [Party's] rights." 460 U. S., at 789.

D

Finally, appellant contends that § 9-431 furthers the State's compelling interest in protecting the integrity of the two-party system and the responsibility of party government. Appellant argues vigorously and at length that the closed primary system chosen by the state legislature promotes responsiveness by elected officials and strengthens the effectiveness of the political parties.

The relative merits of closed and open primaries have been the subject of substantial debate since the beginning of this century, and no consensus has as yet emerged.[11]

---

[11]At the present time, 21 States provide for "closed" primaries of the classic sort, in which the primary voter must be registered as a member of the party for some period of time prior to the holding of the primary election. See Ariz. Rev. Stat. Ann. § 16-467(1984); Cal. Elec. Code Ann. § 501 (West Supp. 1986); Colo. Rev. Stat. § 1-2-203 (Supp. 1986); Conn. Gen. Stat. § 9-431 (1965); Del. Code Ann., Tit. 15, § 3161 (1981); Fla. Stat. § 101.021 (1985); Kan. Stat. Ann. § 25-3301 (1981); Ky. Rev. Stat. §§ 116.045, 116.055 (1982); Me. Rev. Stat. Ann. Tit. 21-A, § 141

Appellant invokes a long and distinguished line of political scientists and public officials who have been supporters of the closed primary. But our role is not to decide whether the state legislature was act-

---

et. seq. (Supp. 1986-1987); Md. Ann. Code, Art. 33, § 3-8 et seq. (1985); Neb. Rev.Stat. § 32-530 (1984); Nev. Rev. Stat. § 293.287 (1985); N.M. Stat. Ann. § 1-4-16 (1985); N.Y. Elec. Law § 1-104.9 (McKinney 1978); N. C. Gen. Stat. § 163.74 (1982 and Supp. 1985); Okla. Stat., Tit. 26, § 1-104 (1976); Ore. Rev. Stat. § 247.201 (1985); Pa. Stat. Ann., Tit. 25, § 2832 (Purdon 1963); S. D. Codified Laws § 12-4-15 (1982); W. Va. Code § 3-1-35 1979); Wyo. Stat. § 22-5-212 (1977). Sixteen States allow a voter previously unaffiliated with any party to vote in a party primary if he affiliates with the party at the time of, or for the purpose of, voting in the primary. See Ala. Code § 17-16-14(b) (1985); Ark. Stat. Ann. § 3-126 (1976); Ga. Code Ann. § 21-2-235 (1982); 111. Rev. Stat., ch 46, ¶ 7-43(a) (1986); Ind. Code § 3-10-1-6 (Supp. 1986); Iowa Code §§ 43.41, 43.42 (1985); Mass. Gen. Laws § 53:37 (1984); Miss. Code Ann. § 23-15-575 (1986 pamphlet); Mo. Rev. Stat. § 115.397 (1978); N.H. Rev. Stat. Ann. § 654:3411 (1986); N. J. Stat. Ann. § 19:23-45 (West Supp. 1986); Ohio Rev. Code Ann. § 3513.19 (Supp. 1985); R. I. Gen Laws § 17-9-26(c) (1981); S. C. Code §§ 7-5-120, 7-9-20 (1976 and Supp. 1985); Tenn. Code Ann. § 2-7-115 (b)(2) (1985); Tex. Elec. Code Ann. § 162.003 (1986). Four States provide for nonpartisan primaries in which all register-

ing wisely in enacting the closed primary system in 1955, or whether the Republican Party makes a mistake in seeking to depart from practice of the past 30 years.[12]

We have previously recognized the danger that "splintered parties and unrestrained factionalism may do significant damage to the

---

ed voters may participate, Alaska Stat. Ann. §§ 15.05.010, 15.25.090 (1982); La. Rev. Stat. Ann. §§ 18:401B, 18:521B (West 1979 and Supp. 1986); Va. Code § 24.1-182 (1985); Wash. Rev. Code § 29.18.200 (1965), while nine States have adopted classical "open" primaries, in which all registered voters may choose in which party primary to vote. Haw. Rev. Stat. § 12-31 (Supp. 1984); Idaho Code §§ 34-402, 34-404, 34-904 (Supp. 1986); Mich. Comp. Laws §§ 168.575, 168.576 (1967 and Supp. 1986); Minn. Stat. § 204D.08(4) (1985); Mont. Code Ann. § 13-10-301(2) (1985); N. D. Cent. Code § 16.1-11-22 (Supp. 1985); Utah Code Ann. § 20-3-19(2) (Supp. 1986); Vt. Stat. Ann. Tit. 17 § 2363 (1982); Wis. Stat. §§ 5.37, 6.80 (1983-1984).

[12]We note that appellant's direct predictions about destruction of the integrity of the election process and decay of responsible party government are not borne out by the experience of the 29 States which have chosen to permit more substantial openness in their primary systems than Connecticut has permitted heretofore.

fabric of government. Storer v. Brown, 415 U. S., at 736. We upheld a California statute which denied access to the ballot to any independent candidate who had voted in a party primary or been registered as a member of a political party within one year prior to the immediately preceding primary election. We said:

> "[T]he one-year disaffiliation provision furthers the State's interest in the stability of its political system. We also consider that interest as not only permissible, but compelling and as outweighing the interest the candidate and his supporters may have in making a late rather than an early decision to seek independent ballot status." Ibid.

The statute in Storer was designed to protect the parties and the party system against the disorganizing effect of independent candidacies launched by unsuccessful putative party nominees. This protection, like that accorded to parties threatened by raiding in Rosario v. Rockefeller, 410 U. S. 752 (1973), is undertaken to prevent the disruption of the political parties from without, and not,

as in this case, to prevent the parties from taking internal steps affecting their own process for the selection of candidates. The forms of regulation upheld in Storer and Rosario imposed certain burdens upon the protected First and Fourteenth Amendment interests of some individuals, both voters and potential candidates, in order to protect the interests of others. In the present case, the state statute is defended on the ground that it protects the integrity of the Party against the Party itself.

Under these circumstances, the views of the State, which to some extent represent the views of the one political party transiently enjoying majority power, as to the optimum methods for preserving party integrity lose much of their force. The State argues that its statute is well designed to save the Republican Party from undertaking a course of conduct destructive of its own interests. But on this point "even if the State were

correct, a State, or a court, may not constitutionally substitute its own judgment for that of the Party." Democratic Party of United States v. Wisconsin ex rel. LaFollette, 450 U. S. at 123-124 (footnote omitted). The Party's determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution. "And as is true of all expressions of First Amendment freedoms, the courts may not interfere on the ground that they view a particular expression as unwise or irrational." Id., at 124.[13]

---

[13]Our holding today does not establish that state regulation of primary voting qualifications may never withstand challenge by a political party or its members. A party seeking, for example, to open its primary to all voters, including members of other parties, would raise a different combination of considerations. Under such circumstances, the effect of one party's broadening of participation would threaten other parties with the disorganization effects which the statutes in Storer v. Brown, 415 U. S. 724 (1974), and Rosario v. Rockefeller, 410 U. S. 752

We conclude that the State's enforcement, under these circumstances, of its closed primary system burdens the First Amendment rights of the Party. The interests which the appellant adduces in support of the statute are insubstantial, and accordingly the statute, as applied to the Party in this case, is unconstitutional.

IV

Appellant argues here, as in the courts below, that implementation of the Party rule would violate the Qualifications Clause of the Constitution, Art. I, § 2, cl. 1, and the

---

(1973), were designed to prevent. We have observed on several occasions that a State may adopt a "policy of confining each voter to a single nominating act." a policy decision which is not involved in the present case. See Anderson v. Celebrezze, 460 U. S. 780, 802, n. 29 (1983); Storer v. Brown, supra at 743. The analysis of these situations derives much from the particular facts involved. "The results of this evaluation, will not be automatic; as we have recognized there is no substitute for the hard judgments that must be made.'" Anderson v. Celebrezze, supra, at 789-790 (quoting Storer v. Brown, supra, at 730).

Seventeenth Amendment because it would establish qualifications for voting in congressional elections which differ from the voting qualifications in elections for the more numerous house of the state legislature.[14] The Party rule as adopted permits independent voters to vote in Party primaries for the offices of United States Senator and Member of the House of Representatives, and for Statewide offices, but is silent as regards primaries held to contest nominations for seats in the state legislature. See supra at 212. Appellant contends that the Qualifications Clause and the Seventeenth Amendment

---

[14] Article I, § 2, cl. 1, provides: "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature." The Seventeenth Amendment, which provides for the direct election of United States Senators, states in pertinent part that "[t]he electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

require an absolute symmetry of qualifications to vote in elections for Congress and the lower house of the state legislature, and that the Party rule, if implemented according to its terms, would require lesser qualifications for voting in Party primaries for federal office than for state legislative office.

The Court of Appeals rejected appellant's argument, holding that the Qualifications Clause and the parallel provision of the Seventeenth Amendment do not apply to primary elections. 770 F. 2d, at 274. The concurring opinion took a different view, reaching the conclusion that these provisions require only that "anyone who is permitted to vote for the most numerous branch of the state legislature has to be permitted to vote" in federal legislative elections. Id., at 286 (Oakes, J., concurring). We agree.

We recognize that the Federal Convention in adopting the Qualifications Clause of Art-

icle I, § 2, was not contemplating the effects of that provision upon the modern system of party primaries. As we have said:

> "We may assume that the framers of the Constitution in adopting that section, did not have specifically in mind the selection and elimination of candidates for Congress by the direct primary any more than they contemplated the application of the commerce clause to interstate telephone, telegraph and wireless communication, which are concedely within it. But in determining whether a provision of the Constitution applies to a new subject matter, it is of little significance that it is one with which the framers were not familiar. For in setting up an enduring framework of government they undertook to carry out for the indefinite future and in all the vicissitudes of the changing affairs of men, those fundamental purposes which the instrument itself discloses." United States v. Classic, 313 U. S. 299, 315-316 (1941).

The fundamental purpose underlying Article I, § 2, cl. 1, that "[t]he House of Representatives shall be composed of Members chosen . . . by the People of the several States," like the parallel provision of the Seventeenth Amendment, applies to the entire process by which federal legislators are chosen.

"Where the state law has made the primary an integral part of the procedure of choice, or where in fact the primary effectively controls the choice." the requirements of Article I, § 2, cl. 1, and the Seventeenth Amendment apply to primaries as well as to general elections. United States v. Classic, supra, at 318; see Smith v. Allwright, 321 U. S. 649, 659-660(1944). The constitutional goal of assuring that the Members of Congress are chosen by the people can only be secured if that principle is applicable to every stage in the selection process. If primaries were not subject to the requirements of the Qualifications Clauses contained in Article I, § 2 and the Seventeenth Amendment, the fundamental principle of free electoral choice would be subject to the sort of erosion these prior decisions were intended to prevent.

Accordingly, we hold that the Qualifications Clauses of Article I, § 2, and the Seventeenth Amendment are applicable to pri-

mary elections in precisely the same fashion that they apply to general congressional elections. Our task is then to discover whether, as appellant contends, those provisions require that voter qualifications, such as party membership, in primaries for federal office must be absolutely symmetrical with those pertaining to primaries for state legislative office.

Our inquiry begins with an examination of the Framers' purpose in enacting the first Qualifications Clause. It is clear that the Clause was intended to avoid the consequences of declaring a single standard for exercise of the franchise in federal elections. The state governments represented at the Convention had established varying voter qualifications, and substantial concern was expressed by delegates as to the likely effects of a federal voting qualification which disenfranchised voters eligible to vote in the States. James Wilson argued that "[i]t would

be very hard and disagreeable for the same persons, at the same time, to vote for representatives in the State Legislature, and to be excluded from a vote for those in the National Legislature." J. Madison, Journal of the Federal Convention 467 (E. Scott, ed. 1893) (hereinafter Madison's Journal). Oliver Ellsworth predicted that "[t]he people will not readily subscribe to a National Constitution, if it should subject them to be disfranchised." Id., at 468. Benjamin Franklin argued, in the same vein, that "[t]he sons of a substantial farmer, not being themselves freeholders, would not be pleased at being disfranchised, and there are a great many persons of that description." Id., at 471. James Madison later defended the resulting provision on similar grounds:

> "To have reduced the different qualifications in the different States, to one uniform rule, would probably have been as dissatisfactory to some of the States as it would have been difficult to the Convention. The provision made by the Convention appears therefore, to be the best that lay within their option. It must be

satisfactory to every State; because it is comformable to the standard already established, or which may be established by the State itself." The Federalist No. 52, p. 354 (J. Cooke ed. 1961).

In adopting the language of Article I, § 2, cl. 1, the Convention rejected the suggestion that a property qualification was necessary to restrict the availability of the federal franchise. See Madison's Journal 468-473; 2 M. Farrand, The Records of the Federal Convention of 1787, pp. 200-216 (1966). Far from being a device to limit the federal suffrage, the Qualifications Clause was intended by the Framers to prevent the mischief which would arise if state voters found themselves disqualified from participation in federal elections. The achievement of this goal does not require that qualifications for exercise of the federal franchise be at all times precisely equivalent to the prevailing qualifications for the exercise of the franchise in a given State. The fundamental purpose of the Qualifications Clauses contained

in Article I, § 2, and the Seventeenth Amendment is satisfied if all those qualified to participate in the selection of members of the more numerous branch of the state legislature are also qualified to participate in the election of Senators and Members of the House of Representatives.

Our conclusion that these provisions do not require a perfect symmetry of voter qualifications in state and federal legislative elections takes additional support from the fact that we have not previously required such absolute symmetry when the federal franchise has been expanded. In Oregos v. Mitchell, 400 U. S. 112 (1970), five Justices agreed that the Voting Rights Act Amendments of 1970 could constitutionally establish a minimum age of 18 for voters in federal elections, while a majority of the Court also concluded that Congress was without power to set such a minimum age in state and local elections. See id., at 117-118 (Black, J. an-

nouncing the judgments of the Court). Appellant's reading of the Qualifications Clause, which would require identical voter qualifications in state and federal legislative elections, is plainly inconsistent with these holdings. We hold that the implementation of the Party rule does not violate the Qualifications Clause or the Seventeenth Amendment because it does not disenfranchise any voter in a federal election who is qualified to vote in a primary or general election for the more numerous house of the state legislature.

V

We conclude that § 9-431 impermissibly burdens the rights of the Party and its members protected by the First and Fourteenth Amendments. The interests asserted by appellant in defense of the statute are insubstantial. The judgment of the Court of Appeals is

Affirmed.

JUSTICE STEVENS, with whom JUSTICE SCALIA joins, dissenting.

The threshold issue presented by this case is whether, consistently with the Constitution, a State may permit a voter to participate in elections to the Congress while preventing that same person from voting for candidates to the most numerous branch of the state legislature. If we respect the plain language of Article I, § 2, cl. 1, of the Constitution and the Seventeenth Amendment, the intent of the Framers, and the reasoning of the opinions in Oregon v. Mitchell, 400 U. S. 112 (1970), we must answer that question in the negative.

Every person who votes in a federal election for a Member of the House of Representatives or for a United States Senator must be qualified to vote for candidates to the most numerous branch of the state legislature. The Constitution has imposed this condition of voter eligibility on congressional elections since 1789[1] and on senatorial elections

[1]Article I, § 2, cl. 1, provides: "The

since the Seventeenth Amendment was ratified in 1913.[2]

As the Court recognizes, ante, at 227, a primary election is part of the process by which Members of the House and Senate are "chosen . . . by the People." U. S. Const., Art. I, § 2, cl. 1. Cf. United States v. Classic, 313 U. S. 299, 315 (1941). In Connecticut one of the qualifications for voters in Republican Party primary elections for the lower house of the State legislature is that the person be "on the last-completed enrollment list of each party in the municipality or voting district . . ." Conn. Gen. Stat. § 9-431 (1985). Thus, only enrolled Repub-

---

House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."

[2]The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

licans may vote in the Republican primary for the state legislature.

The Court today holds, however, that pursuant to the Republican Party of Connecticut's rules, the State must permit independent, as well as enrolled Republican, electors to vote in the Republican primary for the House of Representatives and the Senate of the United States. This facial disparity between the qualifications for electors of House and Senate candidates and the more stringent qualifications for electors to the state legislature violates both Qualifications Clauses.

The Court does not dispute the fact that the plain language of the Constitution requires that voters in congressional and senatorial elections "shall have" the qualifications of voters in elections to the state legislature. The Court nevertheless separates the federal voter qualifications from their state counterparts, inexplicably treating the mandatory "shall have" language of the Clauses

as though it means only that the federal voters "may but need not have" the qualifications of state voters. In support of this freewheeling interpretation of the Constitution, the Court relies on what it describes as the Framers' purpose in enacting the first Qualification Clause and on the judgment in Oregon v. Mitchell, supra. Neither of these arguments withstands scrutiny.

The excerpts from the debate among the Framers quoted by the Court, ante, at 227-229, related to a motion made by Gouverneur Morris, to amend a draft of proposed Art. I, § 1, that had been prepared by the Committee on Detail. To understand the full significance of that debate it is necessary first to consider the provision that Gouverneur Morris wanted to change and then to consider the nature of his proposed amendment.

Justice Stewart accurately summarized that background in his opinion in Oregon v. Mitchell, supra:

"An early draft of the Constitution provided that the States should fix the qualifications of voters in congressional elections subject to the proviso that these qualifications might 'at any Time be altered and superseded by the Legislature of the United States.' The records of the Committee on Detail show that it was decided to strike the provision granting to Congress the authority to set voting qualifications and to add in its stead a clause making the qualifications 'the same from Time to Time as those of the Electors, in the several States, of the most numerous Branch of their own Legislatures.' The proposed draft reported by the Committee on Detail to the Convention included the following:

"'The qualifications of the electors shall be the same, from time to time, as those of the electors in the several States, of the most numerous branch of their own legislatures.' Art. IV, § 1." 400 U. S. at 289 (concurring in part and dissenting in part) (footnotes omitted; emphasis added).

Thus, the draft that the Federal Convention of 1787 was considering when Gouverneur Morris made his motion was abundantly clear--the qualifications of the federal electors "shall be the same" as the electors of the legislatures of the several States. J. Madison, Journal of the Federal Convention 449-450 (E. Scott) ed. 1893). This provision would ensure uniformity of electors' qualifi-

cations within each State, but would not impose a uniform nationwide standard.[3]

It was this clause that Gouverneur Morris proposed to strike in order to substitute a clause permitting Congress to prescribe the electoral qualifications or to adopt a provision "which would restrain, the right of suffrage to freeholders." Id., at 467. Not surprisingly, his proposal was defeated by a vote of 7 to 1 because it would have disenfranchised a large number of voters in States that did not impose a property qualification on the right to vote. Id., at 467, 468, 471-472. Despite the Court's reliances on the concerns that led the Framers to reject the Morris proposal, they shed absolutely no light on the reasons why the Committee on

---

[3] James Wilson referred to this part of the Report of the Committee on Detail as "well considered." and "he did not think it could be changed for the better. It was difficult to form any uniform rule of qualifications, for all the States." J. Madison, Journal of the Federal Convention 467 (E. Scott ed.1893).

Detail had previously decided that the voters' qualifications in state and federal elections "shall be the same."

The Court's reliance on the holding in Oregon v. Mitchell is equally misguided. That case tested the constitutionality of certain parts of the Voting Rights Act Amendments of 1970, 84 Stat. 314, including the section that lowered the minimum age of voters in both state and federal elections from 21 to 18. Four Mmembers of the Court concluded that Congress had no such power;[4] four other Members of the Court concluded that the entire statute was valid.[5] Thus, the conclusions of all eight of those Justices were consistent with

---

[4]See opinion of Justice Harlan, 400 U. S. at 152, 212-213 (concurring in part and dissenting in part), and opinion of Justice Stewart, id., at 281, 287-289 (joined by Burger, C. J. and BLACKMUN, J.)

[5]See opinion of Justice Douglas, id., at 135, 141-144, and the joint opinion, id., at 229, 280-281 (opinion of BRENNAN, WHITE, and MARSHALL, JJ.).

the proposition that the Constitution requires the same qualifications for state and federal elections.[6] Only Justice Black concluded that the statute was invalid insofar as it applied to state elections but valid insofar as it applied to federal elections. 400 U. S. at 125-130.

Even Justice Black's reasoning, however, supports a literal reading of the Qualifications Clause in the absence of a federal statute prescribing a different rule for federal elections. For the relief entirely on the provision in Art. I, § 4, that empowers Congress to alter a State's regulations concerning the times, places, and manner of holding

---

[6]This was certainly the view of Justice Harlan, see id., at 210-211, and of Justice Stewart and the two Justices who joined his opinion, see id., at 287-290. As Justice Stewart observed: "The Constitution thus adopts as the federal standard the standard which each State has chosen for itself." Id., at 288. The opinions of Justice Douglas and JUSTICE BRENNAN are silent on the issue.

elections for Senators and Representatives. 400 U. S. at 119-124. In Justice Black's opinion, the qualifications that the States prescribed for their own voters for state offices "were adopted for federal offices unless Congress directs otherwise under Art. I, § 4." Id., at 125.

In this case there is no federal statute that purports to authorize the State of Connecticut to prescribe different qualifications for state and federal elections. Thus, there is no authority whatsoever for the Court's refusal to honor the plain language of the Qualifications Clauses. An interpretation of that language linking federal voters' qualifications in each State to the States' existing qualifications exactly matches James Madison's understanding:

> "The provision made by the Convention appears therefore, to be the best that lay within their option. It must be satisfactory to every State; because it is conformable to the standard already established, or which may be established by the State itself." The Federalist No. 52, p. 354 (J. Cooke ed. 1961).

I respectfully dissent.

JUSTICE SCALIA, with whom THE CHIEF JUSTICE AND JUSTICE O'CONNOR join, dissenting.

Both the right of free political association and the State's authority to establish arrangements that assure fair and effective party participation in the election process are essential to democratic government. Our cases make it clear that the accommodation of these two vital interests does not lend itself to bright-line rules but requires careful inquiry into the extent to which the one or the other interest is inordinately impaired under the facts of the particular case. See Anderson v. Celebrezze, 460 U. S. 780, 788-790 (1983); Storer v. Brown, 415 U. S. 724, 730 (1974). Even so, the conclusion reached on the individuated facts of one case sheds some measure of light upon the conclusion that will be reached on the individuated facts of the next. Since this is an area, moreover, in which the predictability of de-

cisions is important, I think it worth noting that for me today's decision already exceeds the permissible limit of First Amendment restrictions upon the States' ordering of elections.

In my view, the Court's opinion exaggerates the importance of the associational interest at issue, if indeed it does not see one where none exists. There is no question here of restricting the Republican Party's ability to recruit and enroll Party members by offering them the ability to select Party candidates; Conn. Gen. Stat. § 9-56 (1985) permits an independent voter to join the Party as late as the day before the primary. Cf. Kusper v. Pontikes, 414 U. S. 51 (1973). Nor is there any question of restricting the ability of the Party's members to select whatever candidate they desire. Appellees' only complaint is that the Party cannot leave the selection of its candidate to persons who are not members of the Party, and are unwilling to be-

come members. It seems to me fanciful to refer to this as an interest in freedom of association between the members of the Republican Party and the putative indendent voters. The Connecticut voter who, while steadfastly refusing to register as a Republican, casts a vote in the Republican primary, forms no more meaningful an "association" with the Party than does the independent or the registered Democrat who responds to questions by a Republican Party pollster. If the concept of freedom of association is extended to such casual contacts, it ceases to be of any analytic use. See Democratic Party of United States v. Wisconsin ex rel. La Follette, 450 U. S. 107, 130-131 (1981) (POWELL, J. dissenting) ("[Not] every conflict between state law and party rules concerning participation in the nomination process creates a burden on associational rights"' one must "look closely at the nature of the intrusion, in light of the nature of the association involved, to

see whether we are presented with a real limitation on First Amendment freedoms").

The ability of the members of the Republican Party to select their own candidate, on the other hand, unquestionably implicates an associational freedom--but it can hardly be thought that that freedom is unconstitutionally impaired here. The Party is entirely free to put forward, if it wishes, that candidate who has the highest degree of support among Party members and independents combined. The State is under no obligation, however, to let its party primary be used, instead of a party-funded opinion poll, as the means by which the party identifies the relative popularity of its potential candidates among independents. Nor is there any reason apparent to me why the State cannot insist that this decision to support what might be called the independents' choice be taken <u>by the party membership in a democratic fashion</u>, rather than through a process that permits the mem-

bers' votes to be diluted--and perhaps even absolutely outnumbered--by the votes of outsiders.

The Court's opinion characterizes this, disparagingly, as an attempt to "protec[t] the integrity of the Party against the Party itself." Ante, at 224. There are two problems with this characterization. The first, and less important, is that it is not true. We have no way of knowing that a majority of the Party's members is in favor of allowing ultimate selection of its candidates for federal and statewide office to be determined by persons outside the Party. That decision was not made by democratic ballot, but by the Party's state convention--which, for all we know, may have been dominated by officeholders and office seekers whose evaluation of the merits of assuring election of the Party's candidates, vis-a-vis the merits of proposing candidates faithful to the Party's political philosophy, diverged significantly from the

views of the Party's rank and file. I had always thought it was a major purpose of state-imposed party primary requirements to protect the general party membership against this sort of minority control. See Nader v. Schaffer, 417 F. Supp. 837, 843 (Conn.), summarily aff'd, 429 U. S. 989 (1976). Second and more important, however, even if it were the fact that the majority of the Party's members wanted its candidates to be determined by outsiders, there is no reason why the State is bound to honor that desire--any more than it would be bound to honor a party's democratically expressed desire that its candidates henceforth be selected by convention rather than by primary, or by the party's executive committee in a smoke-filled room. In other words, the validity of the state-imposed primary requirement itself, which we have hitherto considered "too plain for argument," American Party of Texas v. White, 415 U. S. 767, 781 (1974) presupposes that the State has the right "to pro-

tect the Party against the Party itself." Connecticut may lawfully require that significant elements of the democratic election process be democratic--whether the Party wants that or not. It is beyond my understanding why the Republican Party's delegation of its democratic choice to a Republican Convention can be proscribed, but its delegation of that choice to nonmembers of the Party cannot.

In the case before us, Connecticut has said no more than this: Just as the Republican Party may, if it wishes, nominate the candidate recommended by the Party's executive committee, so long as its members select that candidate by name in a democratic vote; so also it may nominate the independents' choice, so long as its members select him by name in a democratic vote. That seems to me plainly and entirely constitutional.

I respectfully dissent.

APPENDIX

-- COPY --

UNITED STATES CONSTITUTION

Article II, Section 1(5):

"No person except a natural-born citizen or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States."

APPENDIX

-- COPY --

UNITED STATES CONSTITUTIONAL

BILL OF RIGHTS

Amendment No. 1:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Amendment No. 14, Section 1:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or prosperity, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX

-- COPY --

CALIFORNIA CONSTITUTION

Article II, Section 5:

"The Legislature shall provide for primary elections for partisan offices, including an open presidential primary whereby the candidates on the ballot are those found by the Secretary of State to be recognized candidates throughout the nation or throughout California for the office of President of the United States, and those whose names are placed on the ballot by petition, but excluding any candidate who has withdrawn by filing an affidavit of noncandidacy."

APPENDIX

-- COPY --

CALIFORNIA ELECTION CODE

Section 1000: Absent Voter definitions:

(c)"'Special absentee voter' means an elector who:

(1) Is a member of the armed forces of the United States or any auxillary branch thereof;

(2) Is a citizen of the United States temporarily living outside of the territorial limits of the United States or the District of Columbia:

(3) Is serving on a merchant vessel documented under the laws of the United States; or

(4) Is a spouse or dependent of a member of the armed forces or any auxiliary branch thereof."

(Added by Stats. 1976, c. 1275, § 18.)

§ 1002. Application for absent voter's ballot.

"Except as provided in Capter 7 (commencing with Section 1450), application for an absent voter's ballot shall be made in writing to the elections official having jurisdiction over the election between the 29th and the 7th day prior to the election. The application shall be signed by the applicant and shall show his place of residence. Any applications received by the elections official prior to the 29th day shall be kept and processed during the application period." (Amended by Stats. 1982, c. 1422, § 1.)

APPENDIX

-- COPY --

CALIFORNIA ELECTION CODE CONT'D.

§ 1003. Absentee ballot available to any registered voter.

"The absentee ballot shall be available to any registered voter." (Amended by Stats. 1978, c. 77, § 2.)

§ 1202.1 Application for special absentee ballot; processing procedures.

"(a) Notwithstanding any other provision of the law, a special absentee voter who qualifies pursuant to this section may apply for a special absentee voter ballot. Any application made pursuant to this section which is received by the clerk prior to the 60th day before the election shall be kept and processed on or after the 60th day before the election.

"(b) If a special absentee voter submits an application containing a statement that provides that due to military or other contingencies that preclude normal mail delivery, as specified by the voter, the voter cannot vote an absentee ballot during the normal absentee voter period, and the voter is otherwise qualified to vote as a special absentee voter, the clerk shall immediately send the voter a ballot in a form prescribed and provided by the Secretary of State, or a ballot and voter registration card if required by § 1200. The clerk shall send with the ballot a list of all candidates who have qualified for the ballot by the 60th day before the election and a list of all measures

§ 1202.1 Cont'd.

which are to be submitted to the voters and to which the voter is qualified to vote. The voter shall be entitled to write in the name of any specific candidate seeking the nomination or election to any office listed on the ballot.

"(c) Notwithstanding Section 17101 or any other provision of law, any name written upon a ballot for a particular office pursuant to subdivision (b) shall be counted for the office or nomination.

"(d) The clerk shall receive and canvass special absentee voter ballots described in this section under the same procedure as absent voter ballots, insofar as that procedure is not inconsistent with the provisions of this section, except that prior to election day, special absentee voter ballots shall be secured separately in a sealed ballot box reserved for that purpose.

"(e) In the event that a voter executes a special absentee ballot pursuant to this section and the military or other contingency does not exist during the normal absentee voting period that voter may make an application for an absentee ballot pursuant to Sections 1200 and 1201. If an application is made pursuant to this subdivision, the clerk shall reject the voted ballot previously cast and process the application in accordance with Chapter 1 (commencing with Section 1000)." (Amended by Stats.1988, c.420, §1; Amended by Stats.1988, c915 §2.)

APPENDIX

-- COPY --

CALIFORNIA ELECTION CODE CONT'D.

§ 6010. Recognized candidate placed on ballot by Secretary of State. (Republican)

"The Secretary of State shall place the name of a candidate upon the Republican presidential primary ballot when the Secretary of State shall have determined that such a candidate is generally recognized throughout the United States or California as a candidate for the nomination of the Republican Party for President of the United States.

"On or before February 1 immediately preceding a presidential primary election the Secretary of State shall publicly announce and distribute to the news media for publication a list of the candidates he intends to place on the ballot at the following presidential primary election. Following this announcement he may add candidates to his selection, but he may not delete any candidate whose name appears on the announced list." (Added by Stats. 1975 c. 1048, §2.)

§ 6013. Circulation of nomination papers for unselected candidate.

"Any unselected candidate desiring to have his name placed on the presidential primary ballot shall have nomination papers circulated in his behalf. In order to qualify his name for placement on the presidential primary ballot, the candidate's nomination papers shall be signed by voters registered as affiliated with the Republican Party equal in number to not less than 1 percent of the number of persons registered as members of the Republican Party,

§ 6013.Cont'd.

as reflected in the report of registration issued by the Secretary of State in January of the year of the presidential primary election." (Added by Stats. 1975, c. 1048, § 2.)

§ 6311.Recognized candidate placed on ballot by Secretary of State. (Democrat)

"The Secretary of State shall place the name of a candidate upon the presidential primary ballot when he or she has determined that such a candidate is generally advocated for or recognized throughout the United States or California as actively seeking the nomination of the Democratic Party for President of the United States. The Secretary of State shall include as criteria for selecting candidates the fact of qualifying for funding under the Federal Elections Campaign Act as amended in 1974.

"After January 1, but on or before February 1, immediately preceding a presidential primary election, the Secretary of State shall publicly announce and distribute to the news media for publication a list of the selected candidates that he or she intends to place on the ballot at the following presidential primary election. Following this announcement the Secretary of State may add candidates to the selection, but he or she may not delete any presidential candidate whose name appears on the announced list except as provided in Section 6313." (Amended by Stats. 1988, c. 8, § 8.)

APPENDIX

-- COPY --

§ 10015. Voters may seek writ of mandate.

"Any voter may seek a writ of mandate alleging that an error or omission has occurred or is about to occur in the placing of any name on, or in the printing of, a ballot, sample ballot, voter pamphlet or other official matter, or that any neglect of duty has occurred or is about to occur.

"A peremptory writ of mandate shall issue only upon proof that the error, omission or neglect is in violation of this code or the Constitution and that issuance of the writ will not substantially interfere with the conduct of the election.

"Such action or appeal shall have priority over all other civil matters." (Added by Stats. 1976, c. 1275, § 21.)

APPENDIX

-- COPY --

§ 20021. Causes for contesting election.

"Any elector of a county, city, or of any political subdivision of either may contest any election held therein, for any of the following causes:

(a) That the precinct board or any member thereof was guilty of malconduct.

(b) That the person who has been declared elected to an office was not, at the time of the election, eligible to that office.

(c) That the defendant has given to any elector or member of a precinct board any bribe or reward, or has offered any bribe or reward for the purpose of procuring his election, or has committed any other offense against the elective franchise defined in Division 17 (commencing with Section 29100).

(d) That illegal votes were cast.

(e) That the precinct board in conducting the election or in canvassing the returns, made errors sufficient to change the result of the election as to any person who has been declared elected.

(f) That there was an error in the vote-counting programs or summation of ballot counts."

(Amended by Stats. 1976. c. 1438, § 19.2.)

APPENDIX

-- COPY --

SEAL

Office of the Secretary of State
March Fong Eu
1230 J Street
Sacramento, California 95814
ELECTIONS DIVISION (916) 445-0820

PRESIDENTIAL CANDIDATE QUALIFICATION PROCEDURES

June 2, 1992 PRIMARY ELECTION

CALIFORNIA

(American Independent, Libertarian, Peace and Freedom, and Republican Parties)

I. Qualifications

The candidate must:

A. be a natural-born citizen of the United States,

B. be at least 35 years of age, and

C. be a resident of the United States at least 14 years.

U. S. Const., art. II, sec. 1(5)

II. Requirements

There are two basic methods by which a

person may have his or her name placed on the ballot as a presidential candidate in the June 2, 1992 Presidential Primary Election: (1) by being placed on the ballot by the Secretary of State as a generally-recognized candidate or (2) by circulating nomination papers.

A. Generally-Recognized Candidates

1. The Secretary of State places on the ballot the names of individuals who she had determined to be generally recognized throughout the United States or California as candidates from the qualified political parties. At this time, the five qualified parties are: American Independent, Democratic, Libertarian, Peace and Freedom, and Republican.

Elections Code §§ 6010, 6110 & 6210.[1]

---

[1]All code section references are to the California Elections Code unless stated otherwise.

APPENDIX

-- COPY --

a. Criteria for determining "generally-recognized" candidates includes, but is not limited to:

(1) Qualification for Federal Election Commission matching funds.

(2) Running in primary elections in other states.

(3) Extensive coverage by the news media as viable candidates.

b. The Secretary of State must make this determination by February 1, 1992, and publicly announce it.

c. Following this announcement, the Secretary of State may add presidential candidates to the selection but may not delete any candidate unless the candidate withdraws in accordance with the provisions of Sections 6012, 6112 and 6213. The Last day to withdraw is March 30, 1992.

B. Circulation of Nomination Petitions for Unselected Candidates.

APPENDIX

-- COPY --

1. A candidate not meeting the "generally-recognized" standard may have his or her name placed on the presidential primary election ballot by circulating nomination papers.

§§ 6013, 6113 & 6214.

2. The nomination paper must be signed by voters registered with the candidate's party equal in number to not less than 1 percent of the number of persons registered as members of that party as of January 19, 1992. §§ 6013, 6025, 6113, 6143, 6214, & 6243.

3. Each signer of a nomination paper may sign only one paper. The signer shall declare his or her intention to support the candidate for nomination or, if applicable, the group of candidates for delegate.

4. Each section of the nomination paper shall be delivered to the elections official of the county in which the

signer resides and is a voter.

5. The period for circulating these petitions is February 19, 1992 through March 20, 1992. §§ 6021, 6032, 6141, 6151, 6241, & 6251.

6. The last day to file nomination papers with the county elections official is March 20, 1992.

7. Appointment of circulators.

   a. The candidate or his/her duly authorized representative or, if applicable, a committee organized to form a group of candidates for delegate or its duly authorized representative, may appoint circulators to circulate nomination papers.

      (1) Circulators shall be voters and shall serve within the county in which the circulators reside. §§ 6031, 6149, & 6249.

      (2) The form on which the circulators are appointed shall be

filed with the elections official of the county in which the circulators reside at or before the time the nomination paper of the candidate is left with the county elections official for examination.

(3) Additional circulators may be appointed in the same manner as the original circulators were appointed. §§ 6030, 6148 & 6248.

8. The Secretary of State shall prepare the following certifications by April 4, 1992:

a. Republican Party: A list containing the names and addresses of the candidates for whom nomination papers have been filed and who are entitled to be voted for at the presidential primary election. § 6050.

b. American Independent Party: A list containing the names and addresses

of the candidates for delegates for whom nomination papers have been filed and who are entitled to be voted for at the presidential primary election. § 6160.

c. Libertarian and Peace and Freedom parties: A list containing the names of the candidates to appear on the presidential preference primary ballot and the names and addresses of the candidates for delegates for whom nomination papers have been filed and who are entitled to be voted for at the presidential primary election. § 6260.

NOTE: In addition to the above two mehtods by which a person may have his or her name placed on the presidential primary election ballot, the American Independent, Libertarian, and Peace and Freedom parties allow a group of candidates to qualify for the national convention delegate portion of the primary elec-

tion ballot. For the American Independent Party, refer to Section 6130 et seq.

III. General information:

A. The California Elections Code contains various requirements which must be met by anyone planning to run as a presidential candidate for the American Independent, Libertarian, Peace and Freedom, and Republican parties. The laws vary depending on the candidate's party. Prospective candidates should review these laws well in advance of the June 1992 Primary Election. For further information, the candidate is advised to consult the following sections in the California Elections Code:

American Independent Party	§§ 6100 et seq.
Libertarian and Peace and Freedom parties	§§ 6200 et seq.
Republican Party	§§ 6000 et seq.

B. The Elections Division of the Office of

the Secretary of State does not provide forms for presidential candidates. The candidate is directed to the California Elections Code sections cited above for information as to what is required on such forms.

C. Because of the requirements of the Federal Election Campaign Act, As Amended, a candidate for President should contact the Federal Election Commission (999 E. Street, N.W., Washington, D.C. 20463), or call the toll-free number (1-800-424-9530) for a copy of the Act and related regulations giving the filing requirements for reporting campaign contributions, and the forms on which to file.

D. Although unlikely at this time, the California Legislature may still amend the laws pertaining to candidates running in the June 1992 Presidential Primary Election. Therefore, it is impor-

tant for the candidate to confirm the validity of the foregoing information in January, 1992.

E. Write-in Candidates: Any person who believes his/her name may be used as a write-in candidate for President shall file an endorsement of write-in candidacy with the Secretary of State not later than May 12, 1992. See Sections 6060 et seq., 6171, and 6272.

F. This publication is for general information only and does not have the force and effect of law, regulation or rule. In case of conflict, the law, regulation or rule will apply. The candidate should obtain the most up-to-date information available because of possible changes in law or procedure since the publication of this information.

APPENDIX

-- COPY --

N E W S R E L E A S E

from: Secretary of State March Fong Eu

1230 J St., Sacramento, CA 95814, (916) 445-6375

For Immediate Release January 31, 1992

Contact: Melissa Warren or Shirley Washington

EU ANNOUNCES PRESIDENTIAL CANDIDATES

FOR JUNE PRIMARY ELECTION

SACRAMENTO--Secretary of State March Fong Eu today (Jan. 31) released the names of the candidates she has selected initially to appear on the June 2 primary election ballot for the presidential nomination of four of the state's six qualified political parties.

Listed alphabetically by party, the candidates are:

American Independent Party Howard Phillips

Democratic Party Edmund G. Brown Jr..

William J. Clinton Tom Harkin

Bob Kerry Paul Tsongas

Green Party

The Green Party has chosen not to partici-

pate in the '92 presidential primary election.

Libertarian Party

The Libertarian Party has already held its nominating convention and has selected Andre Marrou as its nominee for November.

Peace and Freedom Party

Ron Daniels

Republican Party

Pat Buchanan

George Bush

Candidates selected by the secretary of state to appear on the ballot are those who are "generally recognized" as candidates for their respective nominations. Traditionally, the criterion for inclusion on the list of selected candidates for the Democratic and Republican ballots has been qualification for federal matching funds. The Elections Code requires initial selections to be made by Feb. 1.

Presidential hopefuls not selected by the secretary of state may gain ballot access

through the petition process. Unselected Democratic candidates must submit petitions signed by registered Democrats equal to not less than 1% or 500, whichever is fewer, of the party's registration in each of the 52 congressional districts. Unselected Republican, American Independent and Peace and Freedom party affiliates must submit signatures of party members equal in number to 1% of the party's statewide registration total.

Selected or unselected candidates who wish to withdraw from California's primary may do so by filing an affidavit requesting that his or her name be removed. The affidavit must be received by Mar. 30, the 64th day before the election.

Lenora B. Fulani has requested ballot status as a candidate for the Peace and Freedom party nomination; her eligibility to seek that nomination is being reviewed. Dr. Eu did not place the names of Democrat Lyndon LaRouche and Republican David Duke on this initial list of selected presidential candidates because

neither has qualified for federal funds; all other selected Democratic and Republican candidates have done so. Should other candidates qualify after today, Dr. Eu may add their names to the list until Apr. 4. the date she must certify the presidential candidate list.

###

92012MW

APPENDIX

-- COPY --

Office of the Secretary of State
March Fong Eu
Executive Office
1230 J St., Sacramento, California 95814
(916) 445-6371

March 25, 1992

Tennie Rogers
421 North Baldwin Avenue
Sierra Madre, California 91024

Dear Ms. Rogers:

In response to a recent court decision, the Secretary of State has revised her criteria for placing the names of candidates on the Republican and Democratic Presidential Primary ballots for the June 1992 election as indicated below.

For purposes of "selecting" candidates pursuant to Elections Code sections 6010 (Republican candidates) and 6311 (Democratic candidates), an individual shall be deemed to be "generally recognized" or "generally advocated for or recognized" as a candidate if, at the time of selection, the individual has

announced publicly, without subsequent retraction, that he or she is a candidate for the nomination and, according to credible evidence submitted to the Secretary of State, the candidate has:

1) Qualified for matching funds under the Federal Elections Campaign Act; or
2) Qualified for the ballot in twenty or more jurisdictions; or
3) Qualified for the ballot in fifteen or more jurisdictions and has actively competed for delegates in five or more jurisdictions holding caucuses or conventions in lieu of primaries; or
4) Established one or more campaign offices in California; actively solicited votes in California by frequent personal public appearances in numerous locations throughout the state and caused widespread distribution throughout California of campaign literature or messages by hand, mail, or by print or electronic media.

-- COPY CONT'D.

If you believe that you now meet the criteria for selection as a candidate by the Secretary of State, please call me immediately at 916-445-6371 or fax me at 916-324-4573. In order to be considered for selection, I must receive your reply by March 30, 1992.

Sincerely,

ANTHONY L. MILLER

Chief Deputy

APPENDIX

-- COPY --

Office of the Secretary of State

March Fong Eu

Executive Office

1230 J St., Sacramento, California 95814

May 11, 1992 (916) 445-6371

Honorable James T. Ford

Superior Court of California

in and for the County of Sacramento

720 Ninth Street

Sacramento, California 95814

Re: Tennie B. Rogers, et al.

v. Case No.: 370371

March Fong Eu,

Preliminary Letter of Opposition to Issuance of Alternative or other Writ of Mandate.

Department 8, May 12, 1992, 8:30 a.m.

Dear Judge Ford:

Petitioner Rogers seeks placement on the June 1992 Primary ballot as a candidate for the Republican Nomination for President of the United States on the grounds that the Secre-

tary of State should have determined that she is "generally recognized throughout the United States or California as a candidate for the nomination of the Republican Party for President of the United States." Elections Code section 6010. For the reasons hereafter stated, respondent submits that the petition should be denied.

On March 19, 1992, this court, the Honorable Eugene T. Gualco presiding, heard the case of Lyndon H. LaRouche, Jr. et al, v. March Fong Eu, No. 369837. Petitioner LaRouche sought placement on the June 1992 Democratic Presidential ballot as a "generally advocated for or recognized" candidate.

On the afternoon of March 24, 1992, the court entered its order and on March 25, 1992, issued its writ compelling respondent to place the name of Lyndon H. LaRouche, Jr. on the Democratic Presidential Primary ballot in June. Despite the absence of any legal re-

quirement to do so, on March 25, 1992, respondent notified forty-nine prospective presidential candidates by letter advising them of revised interim criteria for consideration for placement on the ballot in response to the court order. (The court order did not require any such notification.) Petitioner Rogers was sent such a letter since she had indicated by letters on December 22, 1991 and January 6, 1992, of her desire to be a candidate. (See Petitioner's Exhibits "Q" and "R".) On March 31, 1992, respondent Eu announced the names of candidates to appear on the June Primary ballot. The list of Republican candidates included George Bush and Pat Buchanan. The list did not include the name of petitioner.

On or about March 31, 1992, the undersigned advised petitioner by telephone and in writing that she would not be placed on the ballot in that she was not a "generally recognized can-

didate" even if the revised criteria (including a showing of significant support throughout California) were to be applied per La Rouche v. Eu. She was similarly advised on or about April 9, 1992. Petitioner was also advised on or about April 9, 1992, that the deadline for adding candidates has passed, that the printing process for producing ballots and other elections materials was already under way, that "special absentee" voters were already in the process of casting ballots, and that adding any additional presidential candidates to the ballot at this late date would substantially interfere with the conduct of the election within the meaning of Elections Code section 10015 (a) (2). A month later, the subject petition followed. Elections Code section 10015 provides that a writ of mandate will issue in a case such as this only upon "proof that the error, omission, or neglect is in violation of this code or

the Constitution and that issuance of the writ will not substantially interfere with the conduct of the election." Elections Code section 10015 (a) (2).

1) THE SECRETARY OF STATE HAS NOT ABUSED HER DISCRETION IN DETERMINING THAT PETITIONER IS NOT "GENERALLY RECOGNIZED" AS A CANDIDATE FOR PRESIDENT. NO ERROR, OMISSION OR NEGLECT HAS OCCURRED WITH RESPECT TO PETITIONER.

Mandate is proper to compel public officials to perform ministerial acts that the law specifically requires them to perform. Code of Civil Procedure section 1085. A writ of mandate will lie to correct an abuse of discretion but will not lie to control the exercise of discretion. The court must uphold an administrative determination where reasonable minds could disagree as to the wisdom of the determination. Manjares v. Newton (1966) 64 Cal.2d 365, 370-371. For mandate to lie, there must be a showing that respondent acted arbitrarily, capriciously, fraudulently, or

without regard for petitioner's rights. Fair v. Fountain Valley School District (1979) 90 Cal. App. 3d 180, 187.

Petitioner appears to have logged many miles and sent out many press releases regarding her candidacy. However, she fails woefully short of the mark with respect to either the statutory or the constitutional requirement. Nor does she meet the interim liberal threshold criteria for consideration used by the Secretary of State following the LaRouche order that were designed to provide more objective standards for determining qualifications with respect to the upcoming election. Being "generally recognized" includes more than candidate declarations, efforts, and personal seriousness about issues. It is more than paying the $1,000 to appear on the New Hampshire ballot. It is more than sending out press releases. It is more than receiving a smattering of votes in primary elections. Like one's reputation in the commu-

nity, "generally recognized" is based on how others perceive the individual. In the context of a presidential campaign effort, it means participating in candidate debates, receiving frequent and in depth coverage in news media, inclusion in public opinion polls, winning delegates, receiving significant numbers of votes in primaries, etc. Petitioner simply does not meet the "generally recognized" test.

The Secretary of State performed the ministerial act contemplated by Elections Code section 6010 when she announced the list of candidates she had selected. The selection of the candidates itself involved an exercise of judgment or discretion over which mandamus does not lie in the absence of an abuse of discretion. Respondent has not abused her discretion. She has applied the same criteria to all candidates. By no reasonable stretch of the imagination is petitioner a "generally recognized" candidate for president through-

out the United States or California. Respondent's judgment in this regard must stand. California's method of determining which names are placed on presidential primary ballots is constitutional. The courts have routinely recognized the state's compelling interest in keeping its ballots of reasonable size and limited to serious candidates. Lubin v. Panish (1974) 415 U. S. 709; Bullock v. Carter (1972) 405 U. S. 134; Knoll v. Davidson (1974) 12 C. 3d 335. To be sure, a state cannot limit ballot access based on financial criteria without providing an alternative method of indicating "seriousness". Knoll v. Davidson, supra. The state has provided an appropriate alternative with respect to presidential primary ballot access by enacting Elections Code section 6316.

2) EVEN IF IT IS DETERMINED THAT THE SECRETARY OF STATE HAS ABUSED HER DISCRETION, THE ISSUANCE OF A WRIT WOULD SUBSTANTIALLY INTERFERE WITH THE CONDUCT OF THE ELECTION IN CONTRA-

VENTION OF ELECTIONS CODE SECTION 10015(a)(2). Virtually all of more than five million sample ballots have been printed and virtually all have been mailed or are in the final stages of being mailed to registered Republican voters. Virtually all actual ballots for over five million registered Republican voters have been printed. "Special absentee" voters began casting ballots since as early as April 3, 1992. Tens of thousands of regular absentee voters have already cast ballots by mail or at the offices of county clerks and registrars. It is simply impossible to add the name of petitioner to the ballot at this late date without cancelling and rescheduling the election itself.

Petitioner has failed to allege and certainly cannot possibly prove that adding the name of petitioner at this time will not substantially interfere with the conduct of the election. The petition must fail on these grounds alone. The petitioner is not entitled to an order

from this court compelling the Secretary of State to place her name on the ballot.

Respectfully submitted,

ANTHONY L. MILLER, Chief Counsel
RICHARD S. NISHITE, Senior Staff Counsel
OLIVER S. COX, Staff Counsel
Attorneys for Respondent
MARCH FONG EU

By: _____
ANTHONY L. MILLER

x cc: Copy to be delivered to petitioner at hearing.

APPENDIX -- COPY --

Tennie B. Rogers
421 N. Baldwin Ave.
Sierra Madre, CA 91024

Of the People
By the People
For the People

December 22, 1991

HONORABLE MARCH FONG EU
SECRETARY OF STATE
1230 J STREET
SACRAMENTO, CA 95814

RE REPUBLICAN PRESIDENTIAL STATEMENT OF CANDIDACY

DEAR HONORABLE MARCH FONG EU:

Enclosed are the following forms:

* STATEMENT OF CANDIDACY AS A REPUBLICAN PRESIDENTIAL CANDIDATE FOR 1992, in the STATE OF CALIFORNIA.

* A photocopy of my STATEMENT OF CANDIDACY, which was sent by Express Mail yesterday to the Federal Election Commission in Washington, DC.

* A photocopy of my STATEMENT OF ORGANIZATION of the ROGERS FOR PRESIDENT COMMITTEE which was also sent to the Federal Election Commission in Washington, DC as of yesterday by Express Mail.

* A photocopy of the FINANCIAL STATEMENT OF THE ROGERS FOR PRESIDENT COMMITTEE dated December 19, 1991 by the TREASURER, which also was sent by Express Mail yesterday to the Federal Election Commission in Washington, DC.

This is to advise that the form needed to officially declare my candidacy for President of

the United States, accompanied by a Cashier's Check for the filing fee, was received by the State of New Hampshire before the deadline of 5:00 p.m. on December 20, 1991. I expect to receive a letter from them within a couple of days.

On this week-end, I'm also filing official papers with the states of Minnesota, Colorado, and Kansas, and if time permits, possibly with other states as well. I hope to send these out by Express Mail today.

Since this is my state of residence, should I keep you posted regarding the timing of my filing for candidacy in the other states?

If any further information is required, please advise.

Sincerely yours,

Tennie Rogers

Enc. - 4.

APPENDIX -- COPY --

Tennie B. Rogers
421 N. Baldwin Ave.
Sierra Madre, CA 91024

Of the People
By the People
For the People

January 6, 1992

HONORABLE MARCH FONG EU
SECRETARY OF STATE
ELECTIONS DIVISION OFFICE
1230 J STREET
SACRAMENTO, CA 95814

RE: REQUEST TO HAVE MY NAME, LISTED BY YOU, AS A REPUBLICAN PRESIDENTIAL CANDIDATE ON THE UPCOMING CALIFORNIA PRIMARY BALLOTS.

DEAR HONORABLE EU:

Today I received back from your office my original letter dated December 22, 1991, along with all the photocopies of information which I had sent in to the Federal Elections Commission in Washington, DC. To my surprise, not even my original letter was retained in your office. Since I am requesting that you add my name to your list of Republican Presidential candidates' names to be listed on the California ballots for the upcoming California Primary, then I am simply puzzled as to why you do not want this in writing!

Now regarding the Qualifications for a Presi-

dential Candidate, I had sent to your office my declaration of candidacy stating that I do meet the qualifications for the office of President of the United States. This was returned to me. If you want me to be more specific, I hereby state that: A. I am a natural born citizen of the United States, being born at Russell, Arkansas, USA on August 1, 1927; B. I am over 35 years of age: I am 64 years of age at this writing; C. I have been a resident of the United States since birth which is a total of 64 years at this writing.

As to the REQUIREMENTS, I prefer to have my name listed on the ballot as a presidential candidate in the June 2, 1992 Presidential Primary Election by the basic method (1) by being placed on the ballot by the Secretary of State as a generally-recognized candidate. I have currently met the qualifications of New Hampshire, Kansas, Colorado, Minnesota and am in the process of filing the correct forms for the other states. As I meet the qualifications in the other states, do you

wish me to keep you informed of this? Now regarding the criteria of extensive coverage by the news media, I wish to advise that as of today, I have faxed out News Releases to 64 of the major newspapers across America. Seven of these were faxed out to the major newspapers here in California. (If you wish to verify this, all of my faxes were sent out by the Kinko's Photocopying Center in Pasadena CA). Now if the news media across our land refuses to print this and write stories about my running as a Republican Presidential Candidate in the upcoming primaries, then that will be nothing less than discrimination. Fortunately, the Los Angeles Times sent out a staff writer last Friday for an interview for a news story and they sent out a photographer this morning. Hopefully they will give me a good write-up in the news, soon!

The other criterion you have listed is: Qualification for Federal Election Commission matching funds. I am currently working on this item.

If there is anything further that you need to know regarding my Republican Presidential Candidacy, please advise.

Sincerely yours,

Tennie Rogers

TR

APPENDIX

TENNIE ROGERS
Republican Presidential
Candidate 1992
421 N. Baldwin Avenue
Sierra Madre, CA 91024

Of the People
By the People
For the People

February 24, 1992

Honorable March Fong Eu
Secretary of State
Elections Division Office
1230 J Street
Sacramento, CA 95814

Re: Request for reconsideration to add my name on the upcoming Calif. Primary Ballots as a Republican Presidential Candidate

Dear Honorable Eu:

After talking with Irene Capps, Elections Analyst today, she recommended that I send in evidence warranting my placement on the upcoming ballots in California. She assured me that the information would be sent to your attorney and expedited quickly! For your reconsideration, the following is presented:

1. The Federal Election Commission has accepted my application as a Presidential Candidate for the Republican Party. My FEC Presidential Candidacy ID number is P20001210. The FEC ID number assigned to my Organiza-

tional Committee, Rogers for President Committee, is C00257287. I am still working on the requirements for the matching funds by the FEC. I think it is most unfair, so early on, to use qualifying for matching funds as the criterion for placement of one's name on the ballot here in California!

2. Since I have already been accepted as a Presidential Candidate in nine of our 50 states--New Hampshire, Colorado, Kansas, Minnesota, Texas, Louisiana, Oklahoma, Mississippi, and also Nebraska--this attests very strongly to the fact that -- I am a generally recognized candidate. In fact, the Secretary of State, of the state of Nebraska, Honorable Allen J. Beermann, has sent me a special certificate with the Great Seal of the State of Nebraska, to that effect. A photocopy of this is enclosed.

3. In addition to the above listed nine states where my application has been accepted, I am still currently applying in other states

where their filing period dates have not even opened yet. I have already been campaigning in the state of Alabama where I have already collected their required number of signatures, over 500, but I have to wait to turn in the signatures until their filing period begins, which is after March 1st. There are other states where I plan to file my candidacy papers, such as in the state of Arkansas, where I was born, but I have to wait on this also until their filing period opens on March 17th. I wish to advise that from each of the states where I have already qualified, the mail has already started pouring in from interested individuals!

4. Finally, I wish to submit to you copies of the newspaper articles that I know about regarding my Republican Presidential Candidacy. In addition to the enclosed articles from the newspapers in this area, I wish to advise that I have faxed out information twice to the major newspapers across

America. Sixty six major newspapers received my first News Release and 60 of these same newspapers received my second News Release. These were all faxed out by "Kinko's" in Pasadena. If the editors of any one of these major newspapers failed to give me any coverage at all regarding my Presidential Candidacy, then, in my book, this is discrimination. Since I truly am a Republican Presidential Candidate in America, the USA, I feel that I should be treated accordingly!

Honorable Secretary of State in California, Mrs. Eu, I am hoping for a favorable response! May I hear from you soon!

Sincerely yours,

Tennie Rogers

TR

Enc. - 10